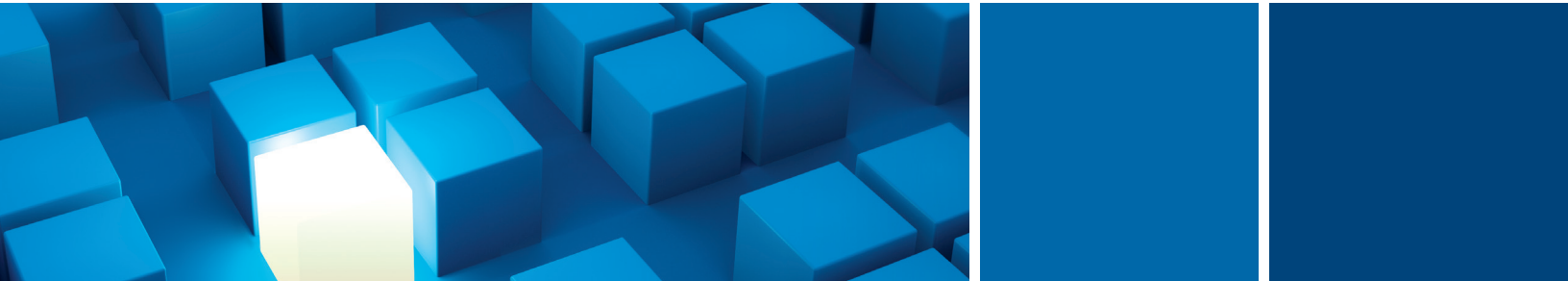


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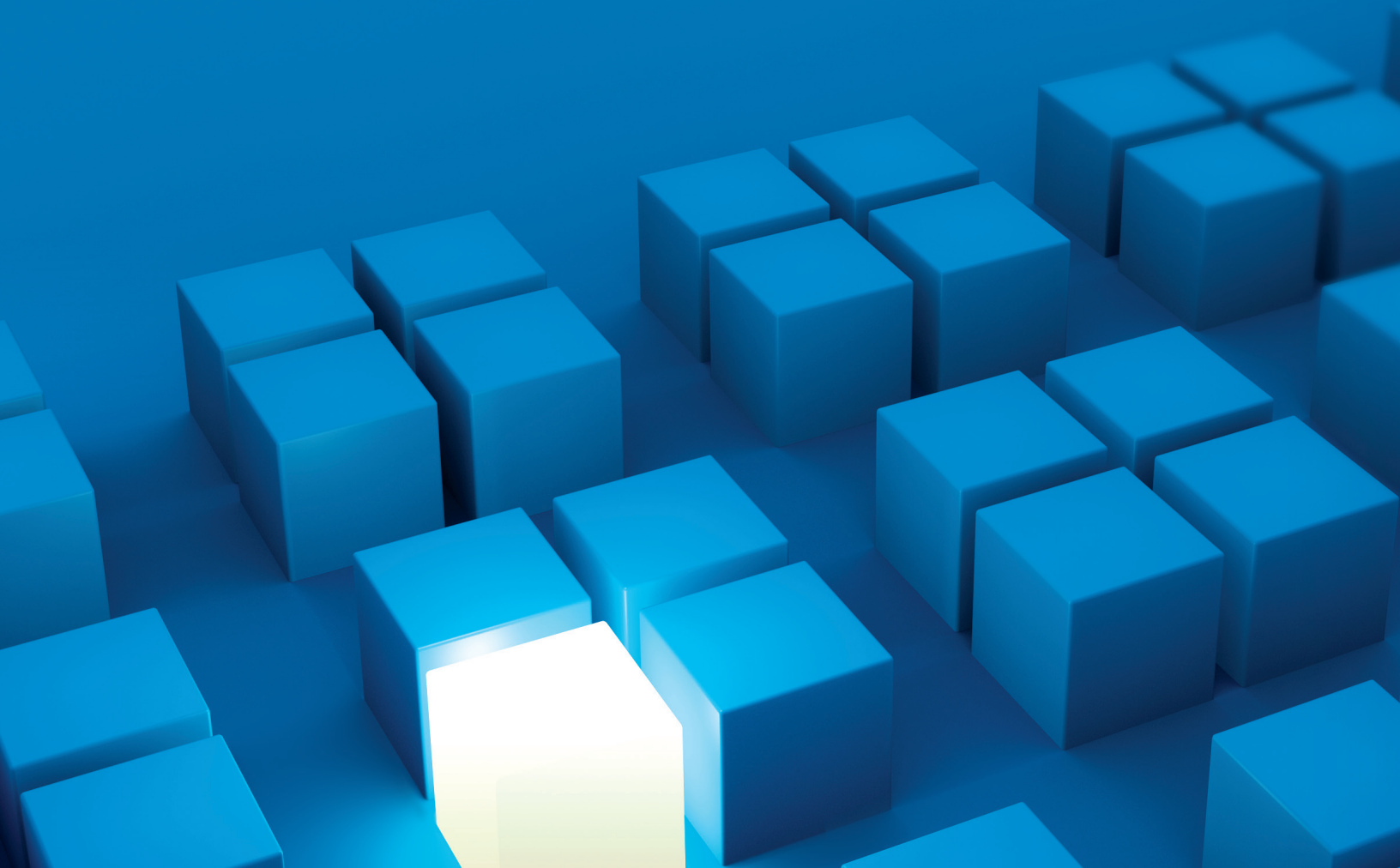
Recent Trends in Securities Class Action Litigation: 2016 Full-Year Review

Record Number of Cases Filed, Led By Growth in Merger Objections
Highest Number of Dismissals in the Shortest Amount of Time

By Stefan Boettrich and Svetlana Starykh

"I am excited to share NERA's *Recent Trends in Securities Class Action Litigation: 2016 Full-Year Review* with you. This year's edition continues work from past years by members of NERA's Securities and Finance Practice. In the 2016 edition, we document a sharp increase in filings, led by a doubling of merger-objection filings. While a discussion of that change features prominently in this edition, there are also interesting developments in filings against foreign-domiciled firms and in the magnitude of NERA-defined Investor Losses involved in cases filed in 2016. While space limitations prevent us from showing all of the analyses that the authors have undertaken to create this new edition of our series, we hope that you will contact us if you want to learn more or just want to discuss our findings and analyses. On behalf of NERA's Securities and Finance Practice, I thank you for taking the time to review our work and hope that you will find it informative."

Dr. David Tabak, Managing Director



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By Stefan Boetttrich and Svetlana Starykh¹

23 January 2017

Introduction and Summary²

The pace of securities class action filings was the highest since the aftermath of the 2000 dot-com crash. Growth in filings was dominated by federal merger objections, which reached a record high, and followed various state court decisions restricting “disclosure-only” settlements, the most prominent being the 2016 *Trulia* decision in the Delaware Court of Chancery. Filings alleging violations of Rule 10b-5, Section 11, or Section 12 grew for a record fourth straight year and reached levels not seen since 2008.

NERA-defined Investor Losses, a proxy for filed case size, reached a record \$468 billion in 2016, 44% of which arose from securities cases claiming damages due to regulatory violations. Of those, several large securities cases stemmed from a US Department of Justice (DOJ) probe into alleged price collusion in generic pharmaceuticals. Those cases contributed to a high concentration of filings in the Health Technology and Services sector.

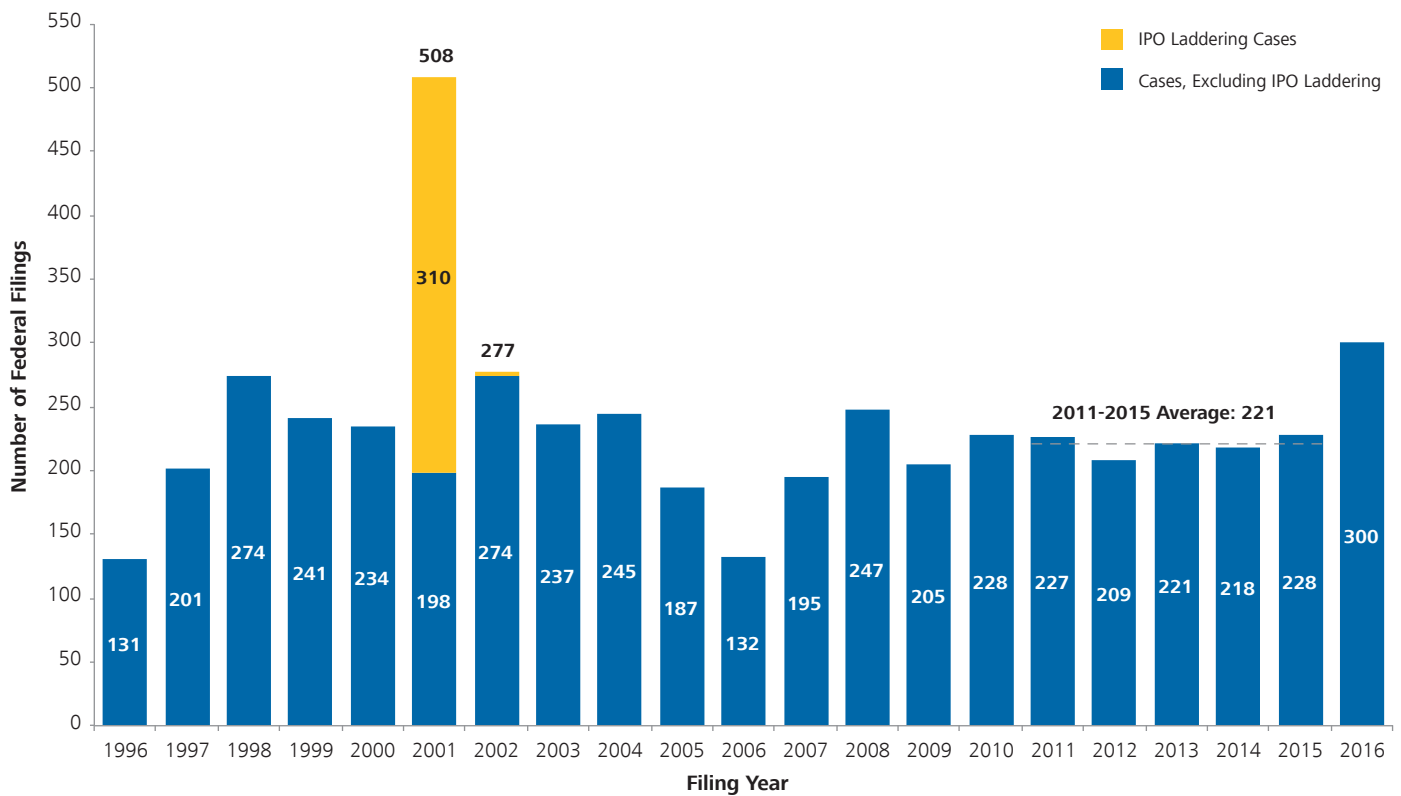
In 2016, a total of 262 securities class actions were resolved, but for the first time since passage of the Private Securities Litigation Reform Act (PSLRA), more cases were dismissed than settled. This is due to a record number of dismissals, at an especially fast pace post-filing, coupled with a settlement rate that remains close to an all-time low. The average settlement amount grew 36% in 2016, marking the second consecutive year of strong growth, partially driven by settlements in two longstanding large cases: *Household International* and *Merck*.

Trends in Filings

Number of Cases Filed

In 2016, 300 securities class actions were filed in federal courts, the highest of any year since the aftermath of the 2000 dot-com crash (see Figure 1). The number of filings in 2016 was 32% higher than in 2015 and 36% higher than the average rate over the prior five years, marking a departure from the remarkably stable rate of filings from 2010 to 2015, following the financial crisis. The level of 2016 filings was also well above the post-PSLRA average of approximately 217 cases per year, excluding IPO laddering cases.

Figure 1. **Federal Filings**
January 1996–December 2016



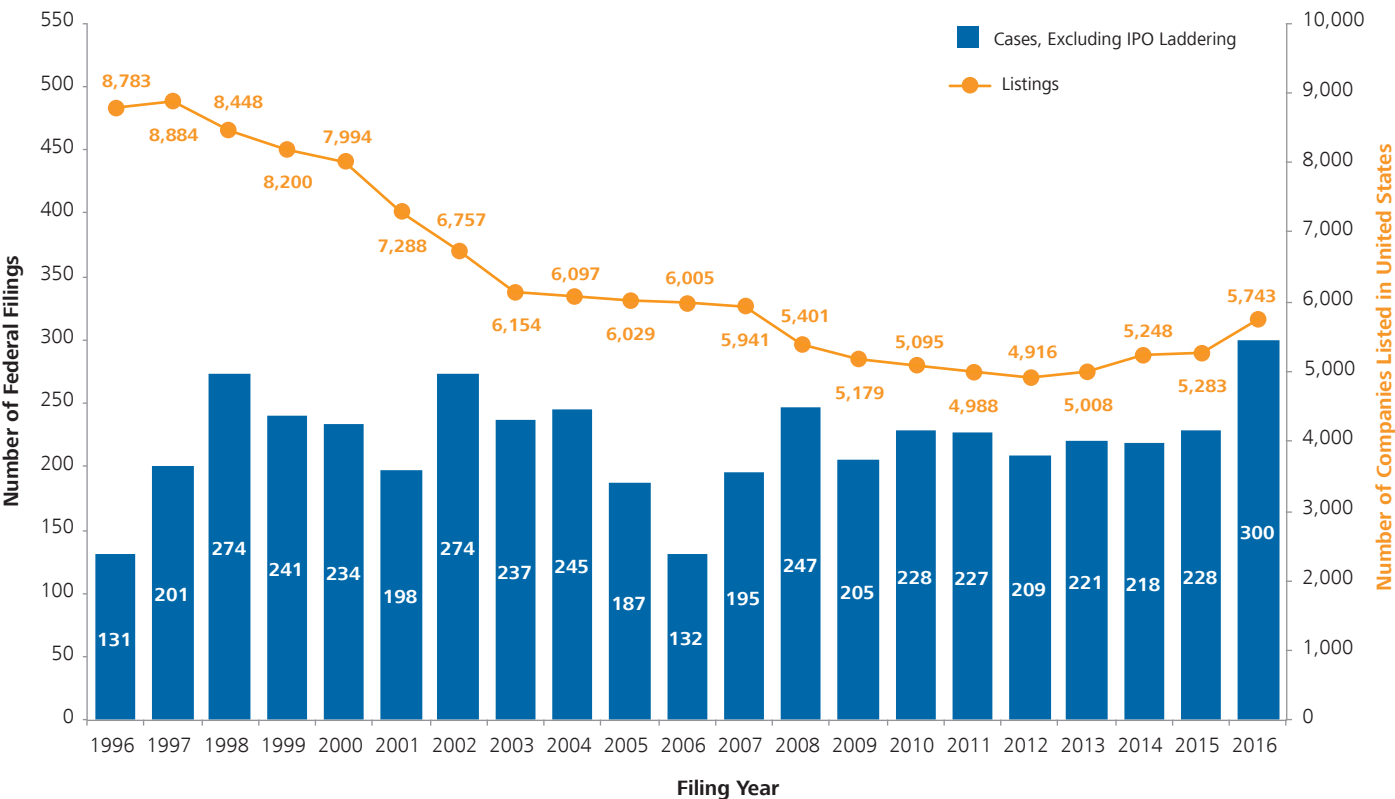
As of November 2016, 5,743 companies were listed on the major US securities exchanges, including the NYSE and Nasdaq (see Figure 2). The 300 federal securities class action suits filed in 2016 involved approximately 5.2% of publicly traded companies.

While the number and composition of securities class actions have fluctuated historically, the number of listed companies at risk of such actions has dropped considerably. Over the past 20 years, the number of publicly listed companies in the US has steadily declined by more than a third, or by about 3,000 listings. Recent research attributed this decline to fewer new listings and an increase in delistings, mostly through mergers and acquisitions, while ruling out the regulatory reforms of the early 2000s as the explanation.³

Despite the large drop in the number of listed companies, the average number of filings of securities class actions over the preceding five years, about 221 per year, is higher than the average number of filings over the first five years after the PSLRA went into effect, about 216 per year. The long-term trend in the number of listed companies coupled with the number of class actions filed imply that the average probability of being sued has increased from 3.2% for the 2000-2002 period to 5.2% in 2016.

The average probability of a firm being targeted by what is often regarded as a “standard” securities class action—one that alleges violations of Rule 10b-5, Section 11, and/or Section 12—was only 3.4% in 2016 and only slightly higher than the average probability of 3.0% between 2000 and 2002.

Figure 2. **Federal Filings and Number of Companies Listed in the United States**
January 1996–December 2016



Note: The source for number of companies listed in US is Meridian Securities Markets; 1996-2015 values are year-end; 2016 value is as of November 2016.

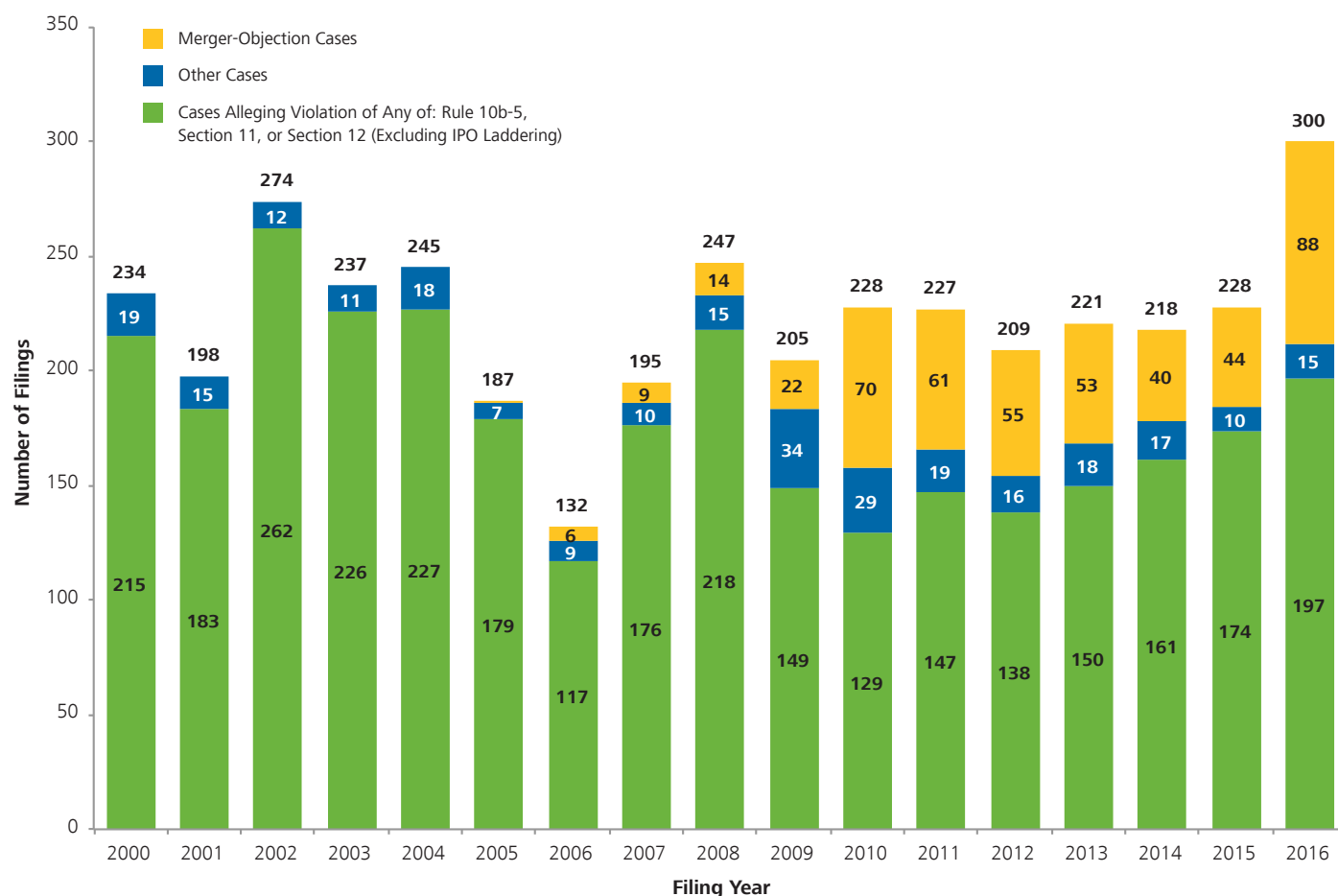
Filings by Type

Overall, the considerable growth in filings in 2016 was driven by dramatic growth in federal merger-objection cases, which typically allege a breach of fiduciary duty by directors and officers, and also driven by steady growth in standard securities class actions (see Figure 3). Despite fluctuating near record lows during the 2010-2012 period, the number of standard case filings has increased moderately in each of the previous four years, the longest expansion on record. In 2016, 197 standard cases were filed.

While standard filings still dominate federal dockets, the record number of filings this year was largely attributable to new merger-objection cases, which numbered 88. The jump likely stemmed from federal merger-objection suits that would have been filed in other jurisdictions but for various state-level decisions limiting “disclosure-only” settlements, with the most prominent being the 22 January 2016 *Trulia* decision in the Delaware Court of Chancery.⁴ Mergers and acquisitions (M&A) activity does not appear to be the primary driver of federal merger-objection case counts because the number of federal merger-objection filings generally fell between 2010 and 2015, despite increased M&A activity over this period. In 2016, notwithstanding a 13% year-over-year drop in M&A deals targeting US companies, merger-objection suits doubled from 2015 levels.⁵

Rounding out the total counts of federal filings in 2016 were a variety of other cases alleging breach of fiduciary duty, management self-dealing, and violation of security-holder contractual rights, among other improper actions.

Figure 3. **Federal Filings by Type**
January 2000–December 2016



Notes: Before 2005, merger objections (if any) were not disaggregated. This figure omits IPO laddering cases.

Merger-Objection Filings

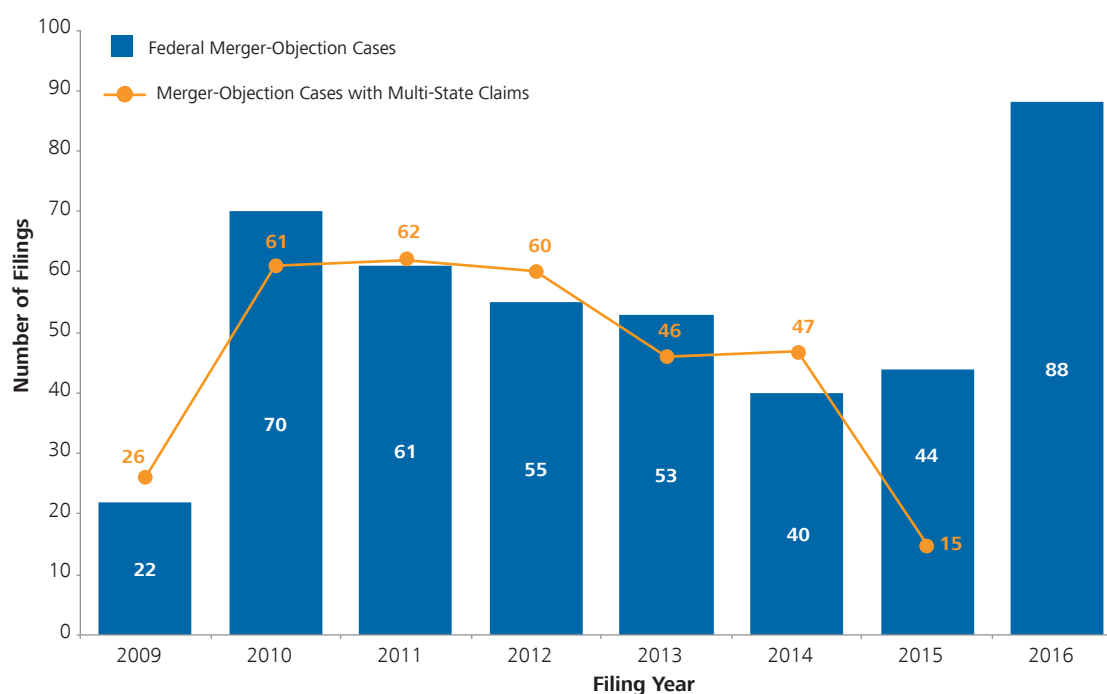
In 2016, federal merger-objection filings grew at the fastest rate since 2010, although recent growth was more likely due to court decisions than due to increased M&A activity (see Figure 4). The 2010 spike in federal merger-objection cases coincided with a doubling of M&A deals and growth in the rate of merger objections, contrasting with a 2016 slowdown in dealmaking.⁶

Historically, state courts, rather than federal courts, have been the primary jurisdiction of merger-objection cases.⁷ Between 2010 and 2015, the slowdown in federal merger-objection filings largely mirrored the slowdown in multi-state merger-objection filings (those filed in multiple state courts), which researchers have indicated may be due to the increased use and effectiveness of forum selection corporate bylaws that limit the ability of plaintiffs to file claims outside of stipulated jurisdictions.⁸

The increased adoption of forum selection bylaws coincided with various state court decisions in 2015 and 2016, particularly those against “disclosure-only” settlements, the most prominent being the 22 January 2016 *Trulia* decision in the Delaware Court of Chancery.⁹ Delaware attracted about half of eligible merger-objection cases prior to the *Trulia* decision, and researchers have suggested that, as a result of the decision, there may be a trend toward litigating merger objections in courts outside of Delaware.¹⁰ While the full extent of such a shift remains to be seen, early signs of a contemporaneous slowdown in merger-objection filings in Delaware and a spike in federal merger-objection filings support such a conjecture.¹¹

Whether any apparent shift in merger-objection suits out of Delaware continues will likely depend on the extent to which other jurisdictions adopt the Delaware Court of Chancery’s lead on disclosure-only settlement disapproval, as well as on the rate of corporate adoption of forum selection bylaws.¹² In 2015, multiple opinions in New York Superior Court rejected disclosure-only settlements, and in 2016, the Seventh Circuit also ruled against a disclosure-only settlement in the case, *In re: Walgreen Co. Stockholder Litigation*.¹³

Figure 4. **Federal Merger-Objection Cases and Merger-Objection Cases with Multi-State Claims**
January 2009–December 2016



Note: Counts of merger-objection cases with multi-state claims are calculated based on data obtained from M. D. Cain and S. D. Solomon, "Takeover Litigation in 2015," Berkeley Center for Law Business and the Economy, 14 January 2016.

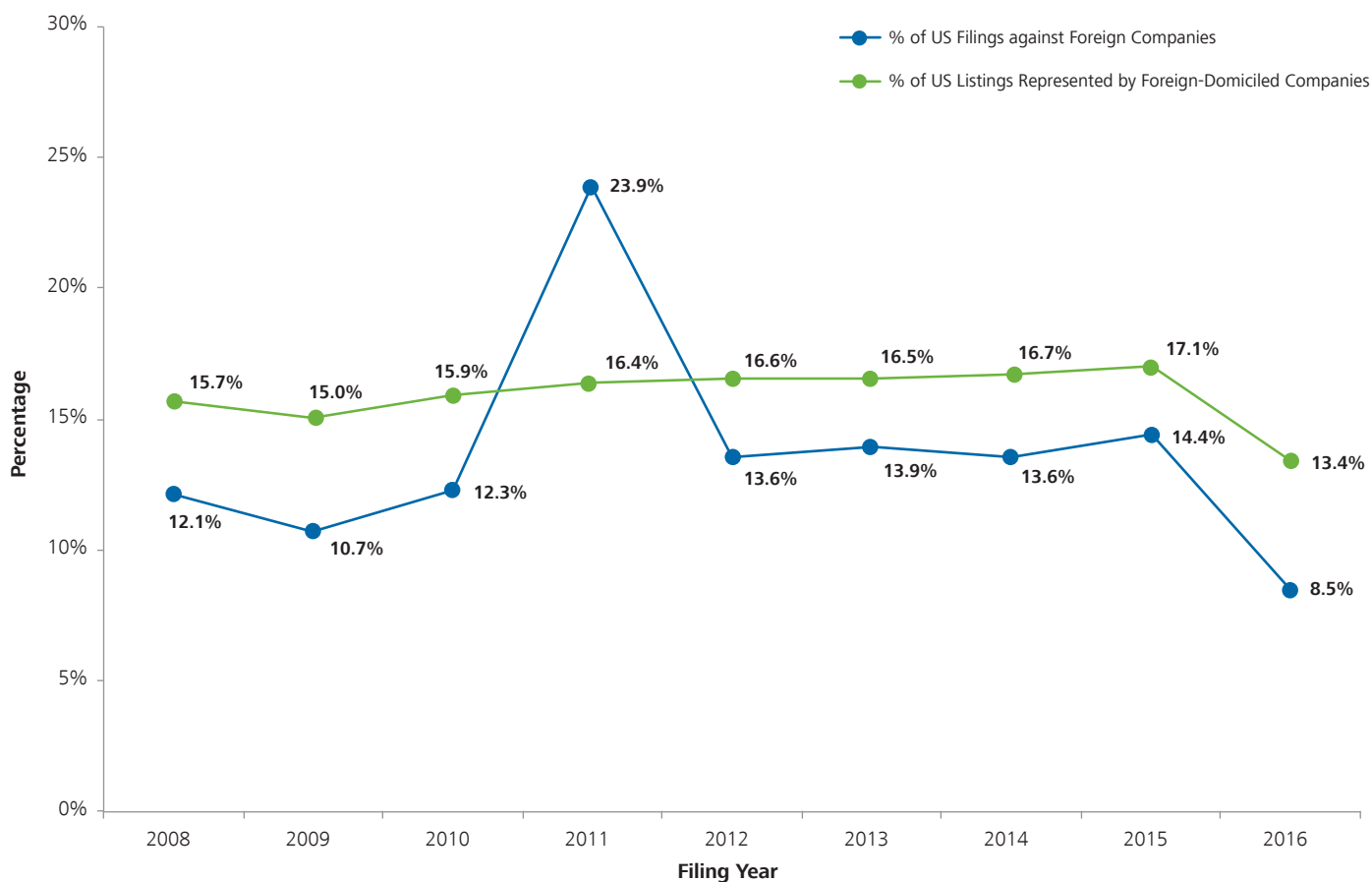
Filings by Issuers' Country of Domicile

In 2011, mostly due to a surge in filings against companies domiciled (or with principal offices) in China, a record 23.9% of cases were filed against foreign issuers (see Figure 5). That year marked the only recent period in which foreign domiciled companies were disproportionately targeted by securities class actions; in other years, the proportion of class actions against foreign-domiciled companies was less than the proportion of foreign listings.

While the proportion of filings against foreign issuers remained above historic levels for a few years following the wave of Chinese cases, the foreign issuer filing rate in 2016 dropped well below levels seen since at least before 2008. This is partially explained by a decline in the percent of overall US listings represented by foreign-domiciled companies. The decline also coincides with a 50% increase in the proportion of filings involving merger-objection claims, which less frequently target non-US companies.¹⁴

The drop in filings against Chinese-domiciled companies in 2016 was especially pronounced, with the fewest filings against such companies since 2009. This may be due to a record number of Chinese companies delisting in the United States and relisting their shares in Chinese markets, "hoping to benefit from higher valuations" there.¹⁵ In addition to reducing the overall count of listed Chinese companies in the United States, the relisting mechanism is more likely to be taken advantage of by firms with relatively weaker accounting or disclosure practices.

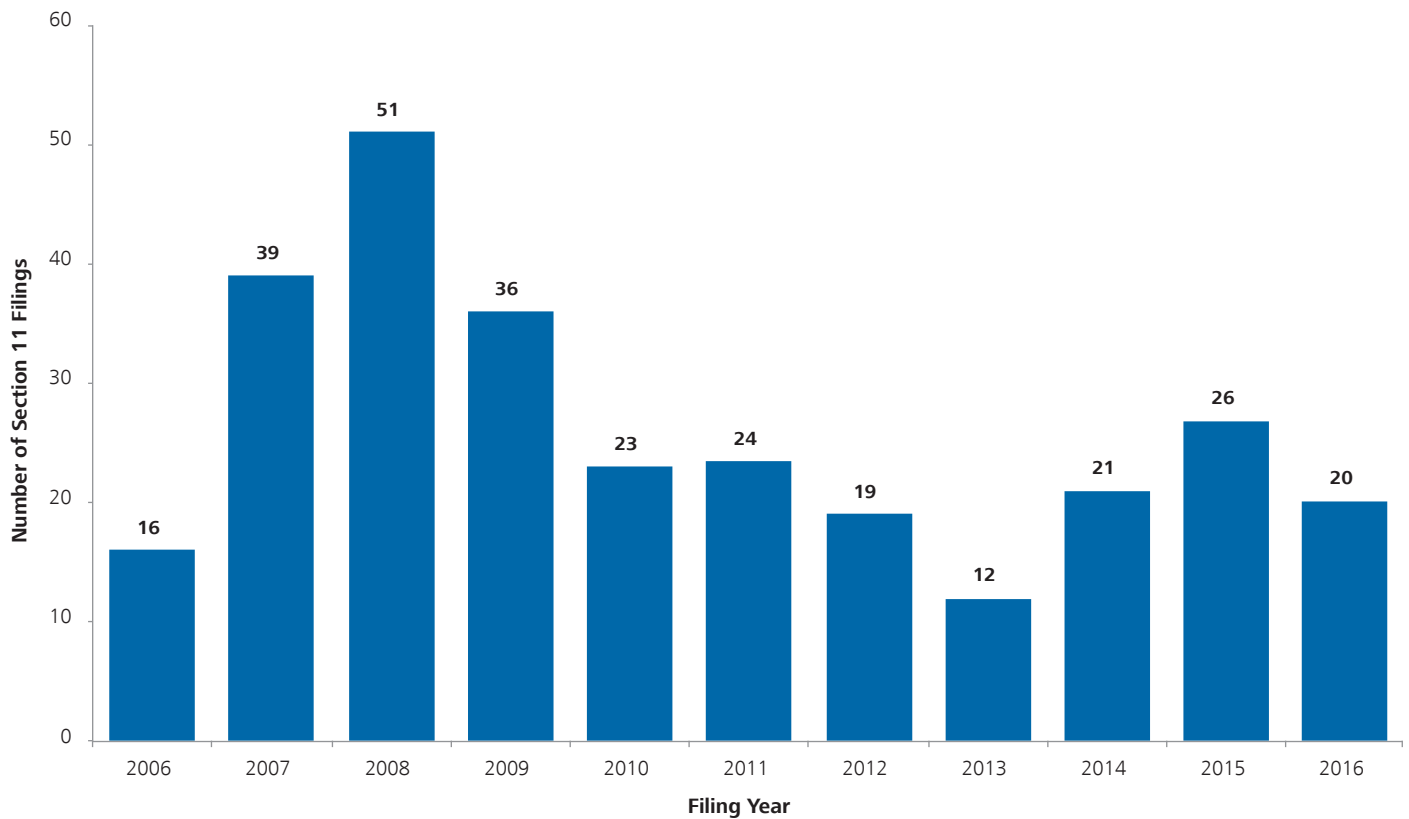
Figure 5. **Foreign-Domiciled Companies: Share of Filings and Share of All Companies Listed in United States**
January 2008–December 2016



Section 11 Filings

In 2016, there were 20 filings alleging violations of Section 11, which is approximately equal to the average rate since 2010 though 23% lower than the rate of such filings in 2015 (see Figure 6). Section 11 filings more than doubled between 2013 and 2015, largely mirroring growth in initial public offerings (IPOs) in prior years. Following what the *Financial Times* cited as a “bumper IPO year” in 2014, offerings slowed by almost 40% in 2015, which, in turn, was followed by a slowdown in Section 11 filings in 2016.¹⁶ Section 11 filings in 2016 spanned many economic sectors and were roughly equally split among the Second, Ninth, and all other Circuits.

Figure 6. **Section 11 Filings**
January 2006–December 2016



Aggregate NERA-Defined Investor Losses

In addition to the number of cases filed, we also consider the total potential size of these cases using a metric we label “NERA-defined Investor Losses.”

NERA’s Investor Losses variable is a proxy for the aggregate amount that investors lost from buying the defendant’s stock, rather than investing in the broader market during the alleged class period. Note that the NERA-defined Investor Losses variable is not a measure of damages because any stock that underperforms the S&P 500 would have Investor Losses over the period of underperformance; rather, it is a rough proxy for the relative size of investors’ potential claims. Historically, Investor Losses have been a powerful predictor of settlement size. Investor Losses can explain more than half of the variance in the settlement values in our database.

We do not compute NERA-defined Investor Losses for all cases included in this publication. For instance, class actions in which only bonds and not common stock are alleged to have been damaged are not included. The largest excluded groups are IPO laddering cases and merger-objection cases. Some previous NERA reports on securities class actions did not include Investor Losses for cases with only Section 11 allegations, but such cases are included here.¹⁷

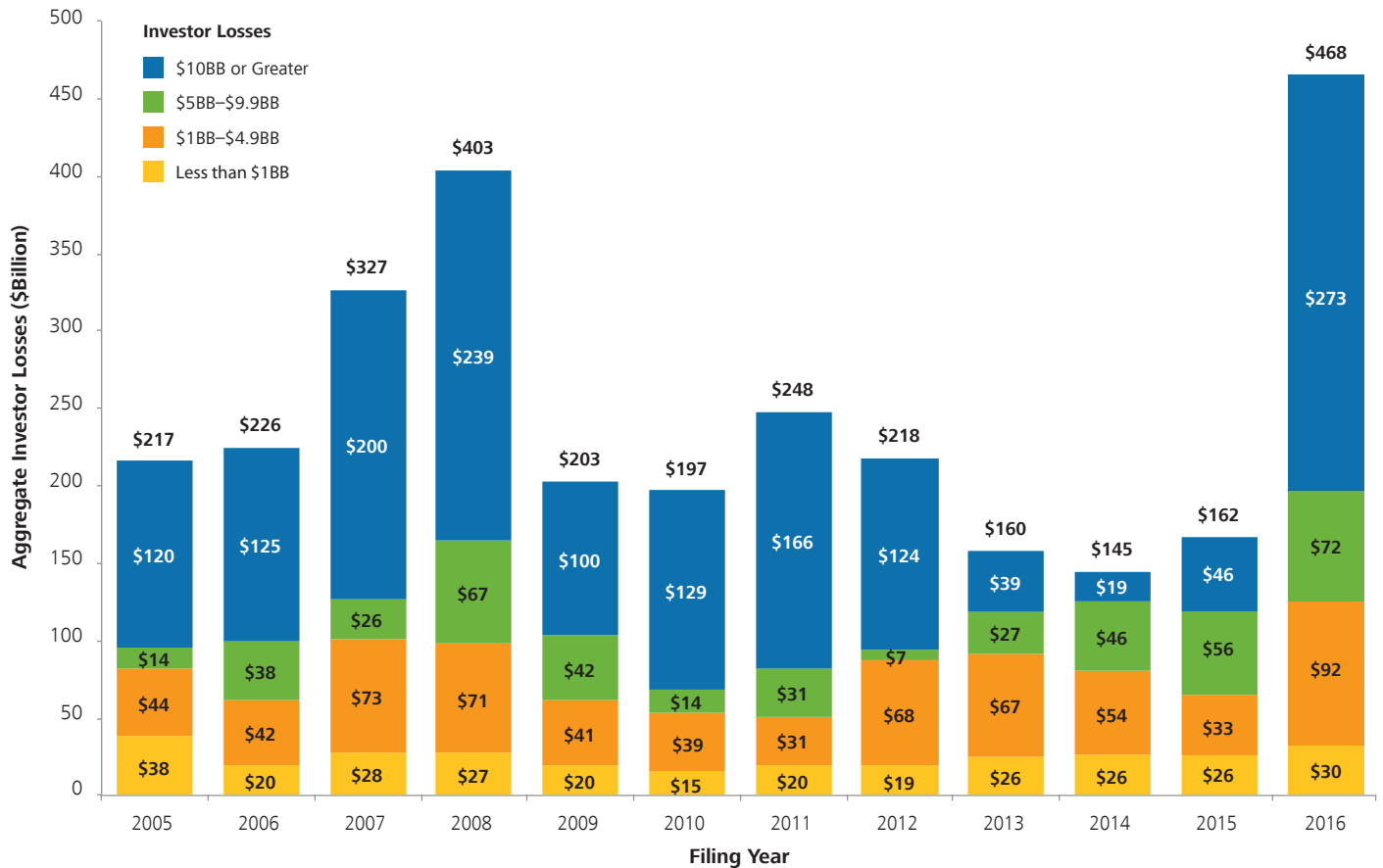
For each year since 2005, we calculate NERA-defined Investor Losses at the time of filing for each case for which losses can be computed. Yearly Investor Losses are grouped by magnitude and aggregated, as shown in Figure 7.

In 2016, aggregate NERA-defined Investor Losses jumped to a record \$468 billion, more than 2.75 times the 2015 rate and exceeded the level of losses in 2008, at the height of the financial crisis. While Investor Losses in each stratum increased from 2015, the 2016 level of losses was driven to a record due to a dramatic increase in (and record amount of) losses attributable to cases with very large Investor Losses (over \$10 billion, shown in dark green in Figure 7).¹⁸ This year marked the first time since 2012 during which Investor Losses stemming from large cases made up most of the total loss for the year.

Claims related to regulatory violations (i.e., those alleging a failure to disclose a regulatory issue) made up a record 44% of NERA-defined Investor Losses in 2016, totaling about \$220 billion. Much of this loss stemmed from price collusion cases spanning the pharmaceutical and poultry industries. Several pharmaceutical companies were caught up in a long-running DOJ probe into alleged generic drug price collusion.¹⁹ In September 2016, a leading poultry distributor sued several poultry producers, alleging price fixing of broiler chickens.²⁰ Our data includes nine securities class actions related to such investigations in the pharmaceutical industry and four securities class actions related to such investigations in the poultry industry. These account for more than \$173 billion in Investor Losses, or about 57% of the growth from 2015 levels. Securities class actions stemming from these investigations also make up more than a third of 2016 aggregate Investor Losses and 60% of losses in the high Investor Losses category.

Even excluding cases stemming from the described allegations of price collusion, 2016 NERA-defined Investor Losses jumped substantially to more than \$295 billion. More than \$109 billion of those losses may be traced to six cases with very large Investor Losses, half of which are in the Health Technology and Services sector. The largest of the six, representing about 8.8% of aggregate Investor Losses, was brought against Wells Fargo, in the Finance sector.

Figure 7. **Aggregate NERA-Defined Investor Losses—Shareholder Class Actions with Alleged Violations of Rule 10b-5, Section 11, or Section 12**
January 2005–December 2016



Filings by Circuit

Filings continued to be concentrated in the Second and Ninth Circuits, where more cases were filed than in all other circuits combined (see Figure 8).

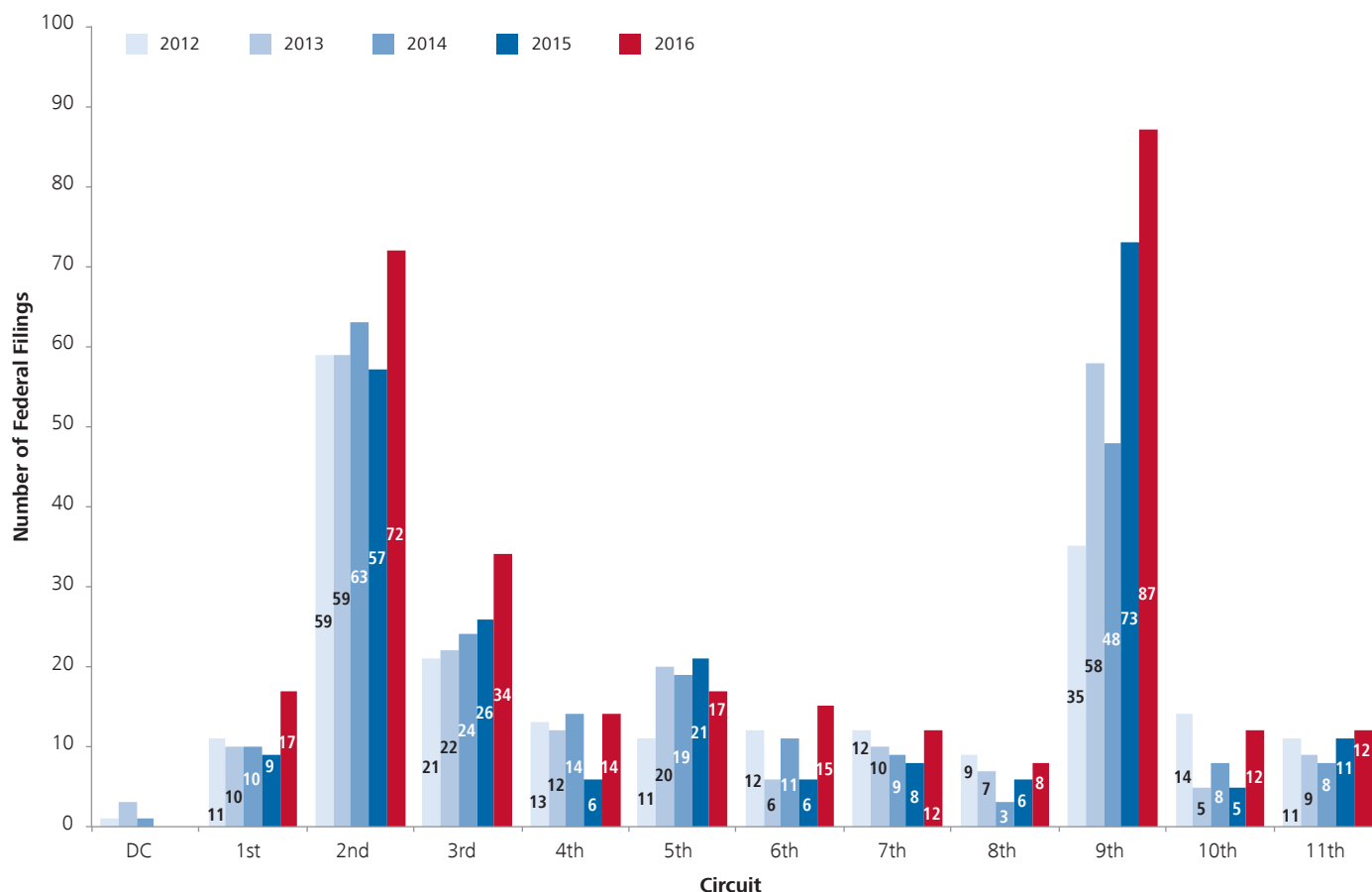
In the Ninth Circuit, the number of filings grew nearly 20%, to 87. Filings of merger-objection cases were a major growth factor, tripling to 27. Filings alleging violations of Rule 10b-5, Section 11, and/or Section 12, fell 11% to 55. Of these, seven cases alleged violations of Section 11, down marginally from 2015 but remaining near a five-year high and constituting about a third of all Section 11 cases.

Filings in the Second Circuit have grown over the past five years and reached an all-time high of 72 in 2016. As in 2015, the Second Circuit accepted disproportionately fewer merger-objection cases in 2016—while about a quarter of all securities class actions were filed in that Circuit, only about nine percent of merger-objection cases were filed there. Merger-objection suits may be less common in the Second Circuit, as multiple 2015 opinions in New York Superior Court rejected disclosure-only settlements either as “relatively worthless settlements” or discounted them as “merger tax suits.”²¹

Filings of “standard” securities class actions in the Second Circuit made up the difference; despite lagging behind the overall filing load of Ninth Circuit, six more standard cases were filed in the Second Circuit than in the Ninth Circuit.

Recent steady growth in filings in the Third Circuit, which includes Delaware, continued in 2016. Third Circuit filings reached 34, up from 21 in 2012. As in the Ninth Circuit, growth of merger-objection cases was a factor. The number of such cases increased by nearly 43% in 2016, representing a bit less than a third of all filings in the Circuit. In the Fifth Circuit, 17 securities class actions were filed, the fewest in four years, and standard cases outnumbered merger objections by two-thirds.

Figure 8. **Federal Filings by Circuit and Year**
January 2012–December 2016



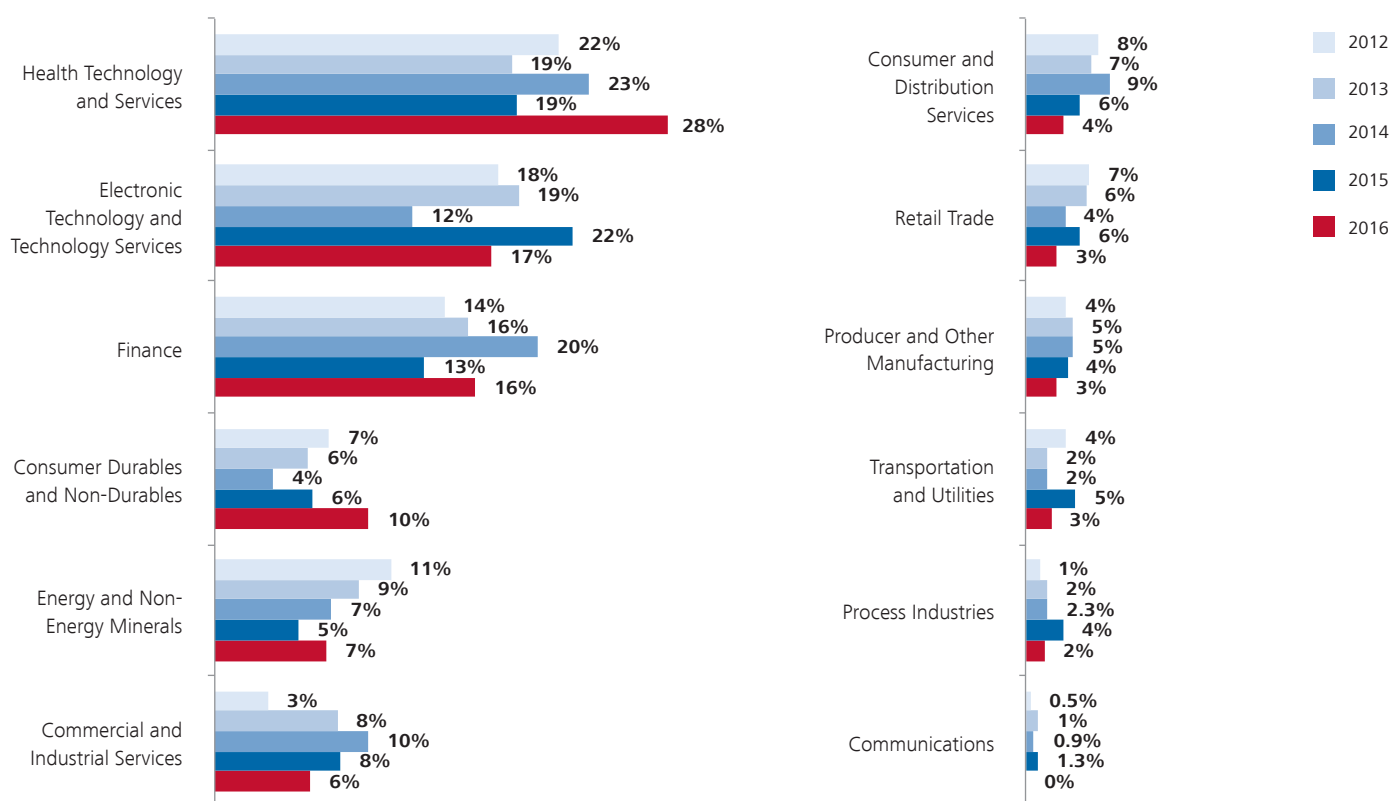
Filings by Sector

In 2016, 28% percent of securities class action cases were brought against firms in the Health Technology and Services sector (see Figure 9). Other than Finance sector filings between 2007 and 2009, filings have not been so concentrated in a single sector since at least 2005. There were 85 filings in the Health Technology and Services sector, almost doubling from 2015 levels. While the nine securities class actions stemming from DOJ probes into generic pharmaceutical price collusion contributed to the growth of cases in the sector, most cases in the sector were driven by claims related to financial performance or other regulatory actions.

The rate of filings against firms in the Electronic Technology and Technology Services sector was approximately equal to the five-year average rate and was a reversion from a large upward movement observed last year. Filings against firms in this sector would have fallen even more but for a jump in merger-objection cases, which made up nearly 45% of filings and possibly resulted from the technology sector's lead over other industries in 2016 M&A activity.²²

Finance sector filings made up 16% of total filings, reverting to approximately the five-year average rate after a large downward movement last year.

Figure 9. **Percentage of Filings by Sector and Year**
January 2012–December 2016



Note: This analysis is based on the FactSet Research Systems, Inc. economic sector classification. Some of the FactSet economic sectors are combined for presentation.

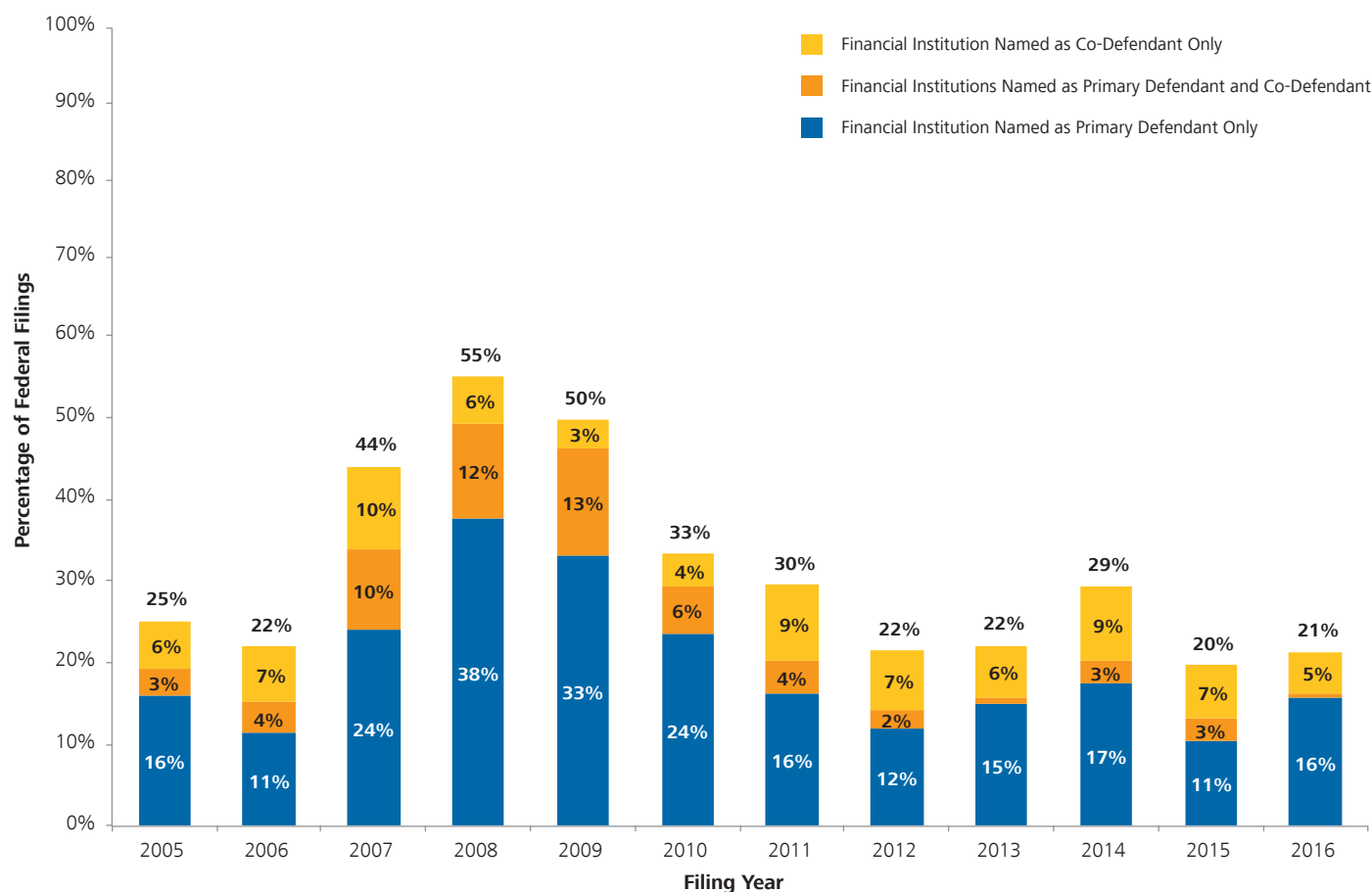
Defendants in the Finance Sector

In addition to being targeted as primary defendants, companies in the Finance sector are often named as co-defendants, potentially as underwriters of the securities at issue.

In 2016, 21% of securities class actions filed had a defendant in the Finance sector (whether a primary defendant or co-defendant) (see Figure 10). The concentration of filings in the sector peaked to more than 50% of all filings during the financial crisis and has tailed off since then. Although filings listing Finance sector firms as the primary defendant ticked up last year, the rate of filings in the sector is roughly equal to that in the 2005 and 2006 pre-crisis period.

Thirteen of the 15 cases filed in 2016 with financial institution co-defendants were Section 11 cases with an underwriter co-defendant, a rate consistent with previous years.

Figure 10. **Federal Cases in which Financial Institutions Are Named Defendants**
January 2005–December 2016



Accounting Co-Defendants

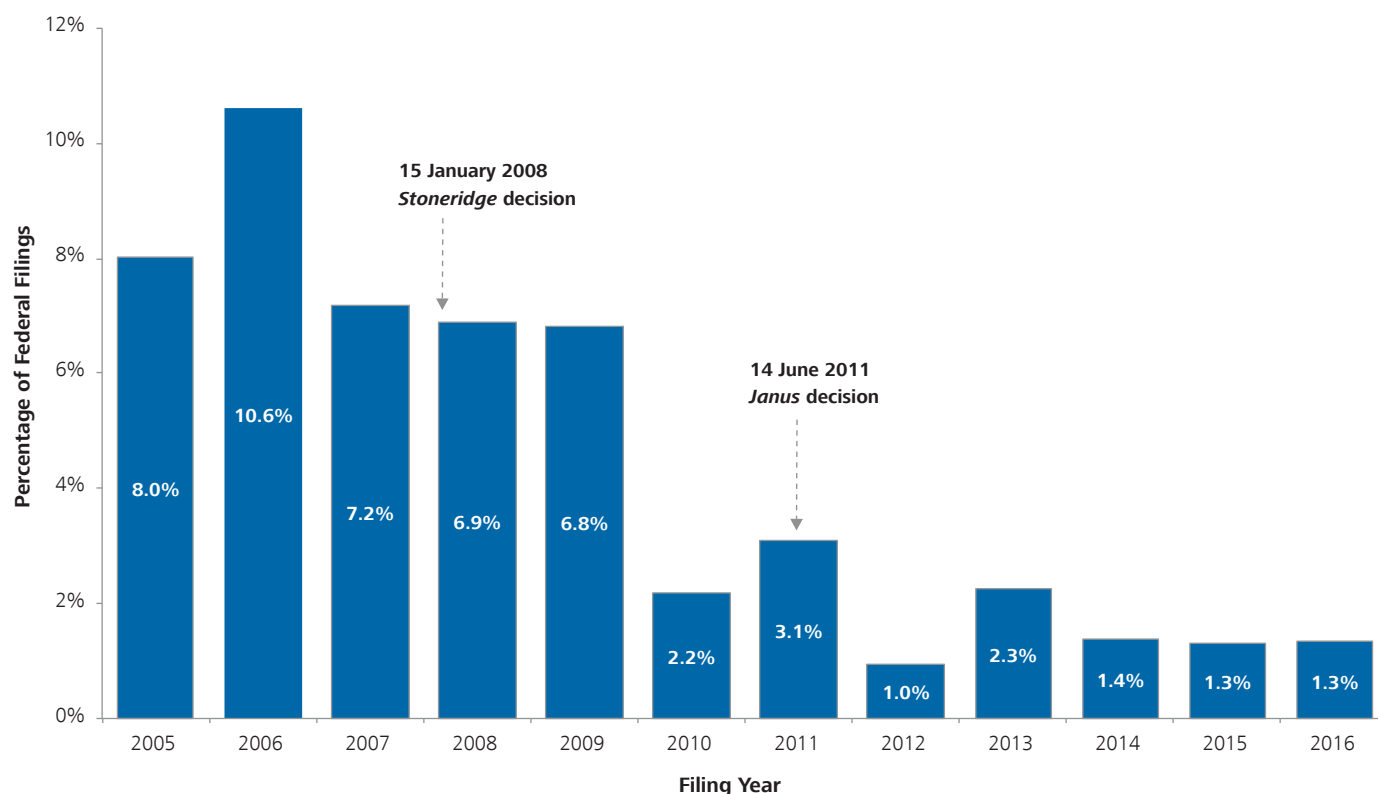
Accounting firms were co-defendants in only four securities class actions in 2016, three of which included allegations against a Big Four accounting firm.

Despite a marginal increase in the number of federal filings with an accounting firm co-defendant in 2016, such filings are still much rarer than in the years prior to the financial crisis. This trend is likely the result of two factors: (1) fewer cases that include accounting allegations being filed and (2) changes in the legal environment related to accounting co-defendants.

First, since 2005, the percent of filings with accounting claims dropped from about 56% to about 20% in 2016, while the percent of cases with an accounting co-defendant dropped from 8% to less than a fifth of that (see Figure 11).²³

Second, the drop in the relative percent of filings with an accounting co-defendant, however, exceeded the decline of filings with accounting allegations, potentially due to changes in the legal environment, which was affected by two US Supreme Court rulings over the period. The Supreme Court's *Janus* decision in 2011 restricted the ability of plaintiffs to sue parties not directly responsible for misstatements.²⁴ Along with the High Court's *Stoneridge* decision in 2008, which limited scheme liability, the *Janus* decision may have made accounting firms less appealing targets for securities class action litigation.²⁵

Figure 11. **Percentage of Federal Filings in which an Accounting Firm Is a Co-Defendant**
January 2005–December 2016



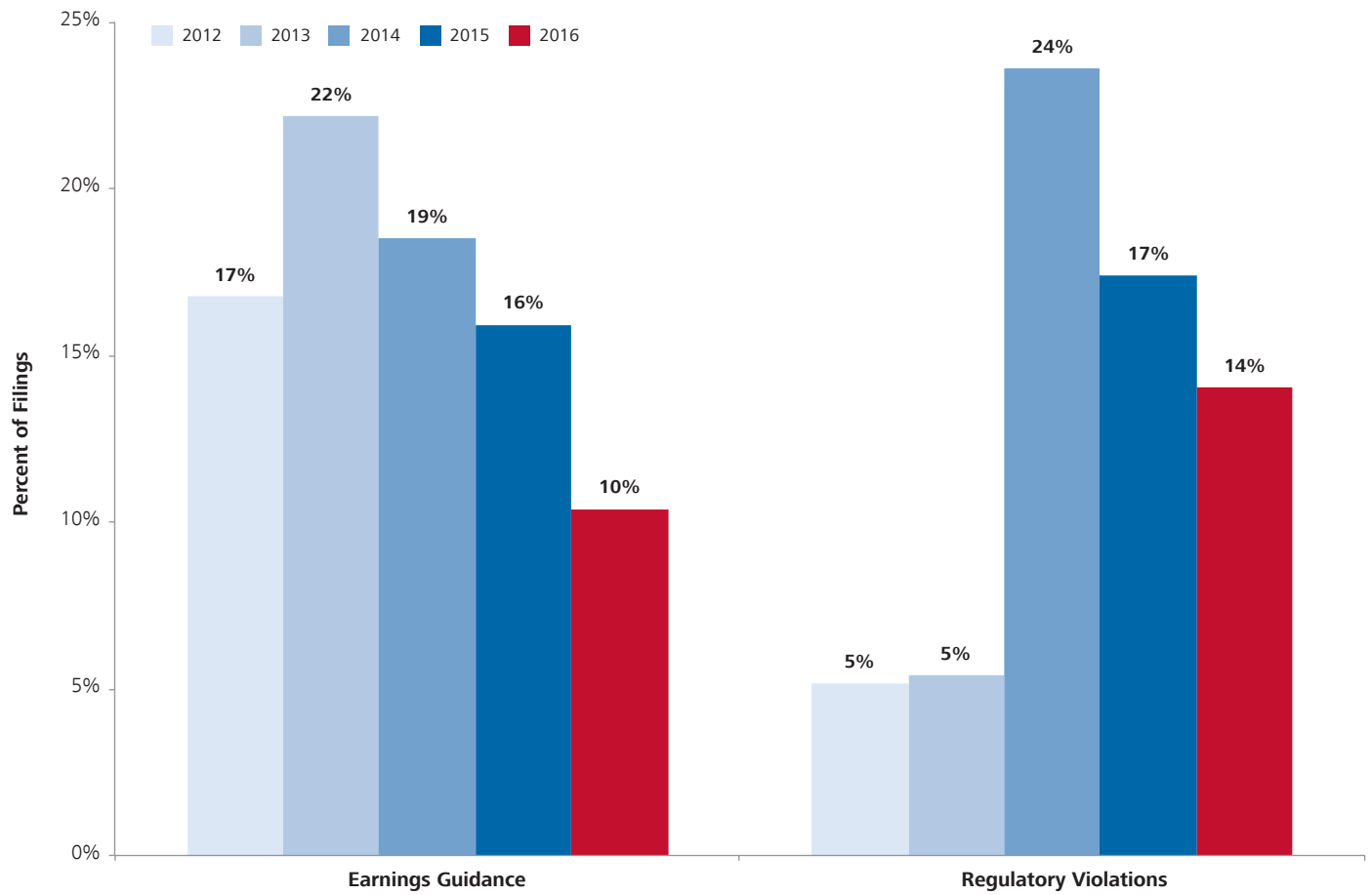
Allegations

In 2016, only about one in 10 filings contained allegations related to misleading earnings guidance, a continuation of the precipitous fall in such allegations in recent years (see Figure 12). The decline is partially explained by an increase in merger-objection cases, which don't generally include claims of misleading guidance. The decline also correlates with a decline in technology sector 10b-5s, which historically constituted about a third of all earnings guidance cases. In 2016, the number of cases in the technology sector claiming misleading earnings guidance fell by more than 60% and constituted only about 16% of all earnings guidance cases. Nearly 60% of 10b-5 filings in the technology sector alleged accounting or regulatory violations.

In 2014, there was a dramatic increase in the number of securities class actions related to regulatory violations. Since then, most securities cases with regulatory violations have been concentrated in the Finance sector and the Health Technology and Services sector, with the latter driving filings in 2016; at least partially due to generic drug price collusion cases. In 2016, securities cases stemming from price collusion allegations in the market for broiler chickens resulted in filings against Tyson Foods, Pilgrim's Pride Corporation, and Sanderson Farms.²⁶

Most complaints include a wide variety of allegations, not all of which are depicted here. Due to multiple types of allegations in complaints, the same case may be included in both the earnings guidance and regulatory violations categories.

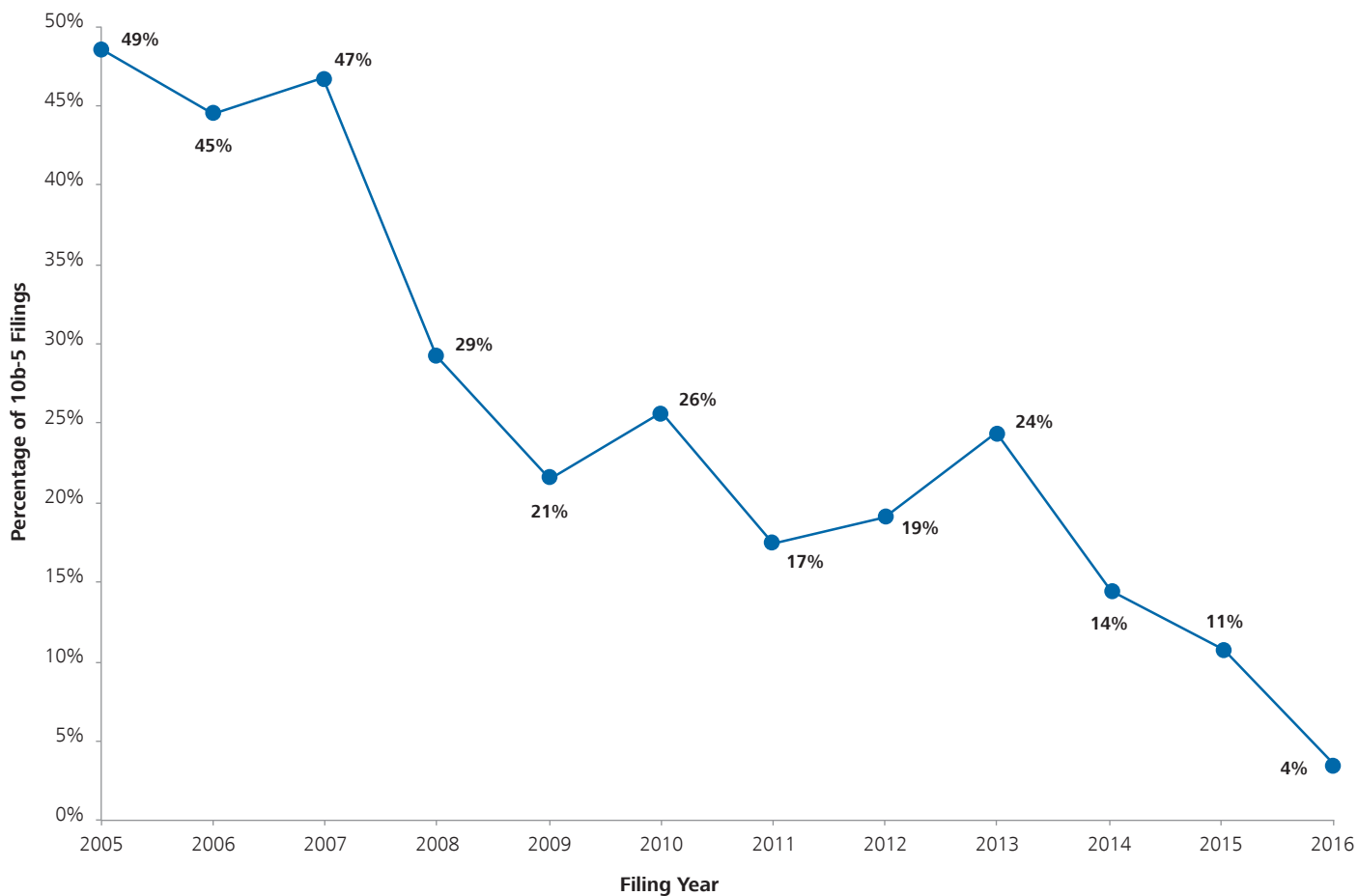
Figure 12. **Allegations Related to Earnings Guidance and Regulatory Violations**
January 2012–December 2016



Alleged Insider Sales

The percentage of 10b-5 class actions that also alleged insider sales decreased in 2016, dropping to 4% and marking a second consecutive record low. Cases alleging insider sales were much more common prior to the financial crisis, having peaked at 49% in 2005 (see Figure 13).

Figure 13. **Percentage of Rule 10b-5 Filings Alleging Insider Sales by Filing Year**
January 2005–December 2016

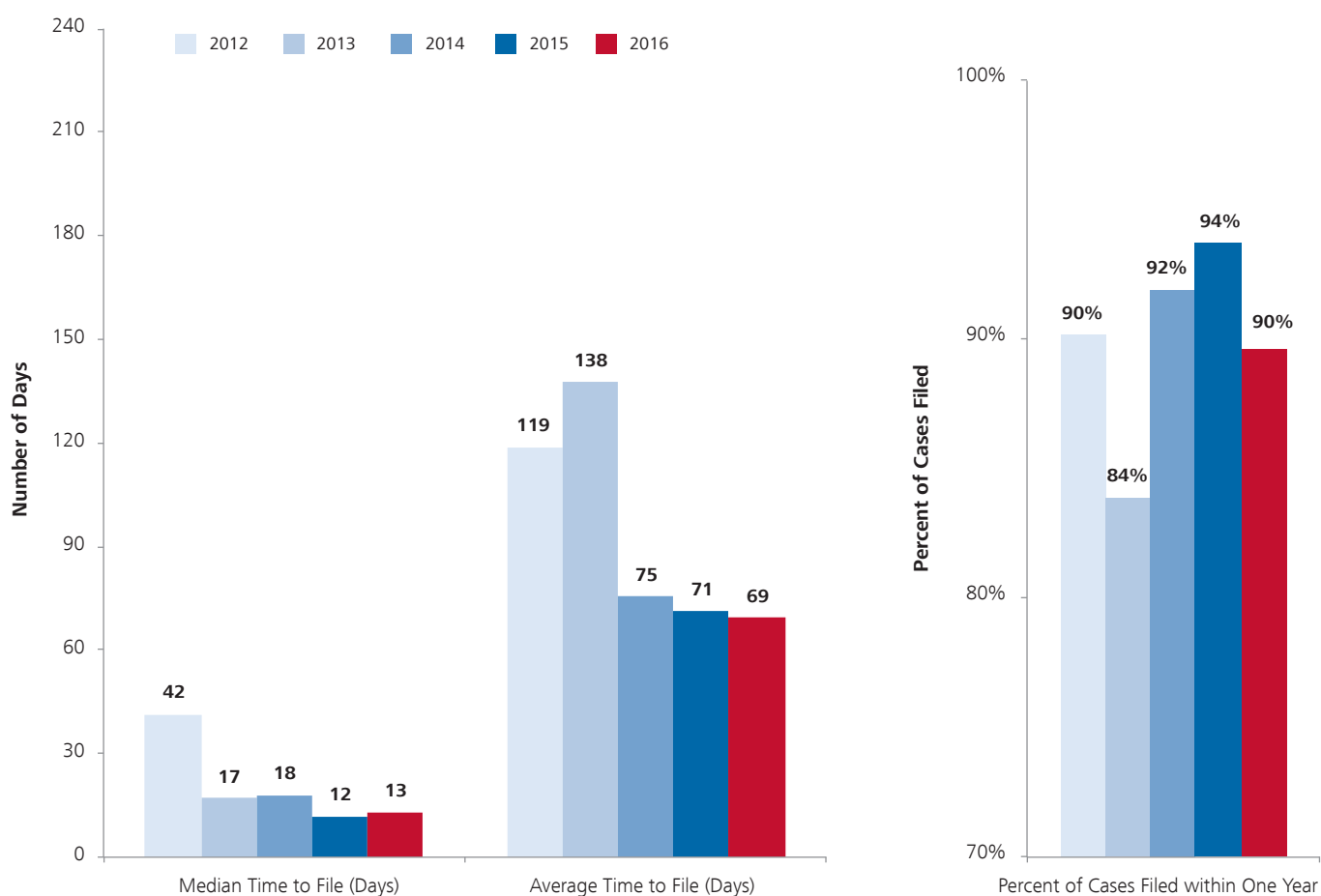


Time to File

The term “time to file” denotes the time that has elapsed between the end of the alleged class period and the filing date of the first complaint. Figure 14 illustrates how the median time and average time to file (in days) have changed over the past five years.

The time to file in securities cases remained near record-low levels for a second consecutive year in 2016. The average time to file was 69 days, while half of all cases were filed within 13 days or less. We also observe that the percent of complaints filed within one year of the end of the class period remained at approximately 90% in 2016. These metrics indicate a trend toward a lower frequency of cases with long periods between the date when an alleged fraud was revealed and the date a related claim is filed.

Figure 14. **Time to File from End of Alleged Class Period to File Date for Rule 10b-5 Cases**
January 2012–December 2016



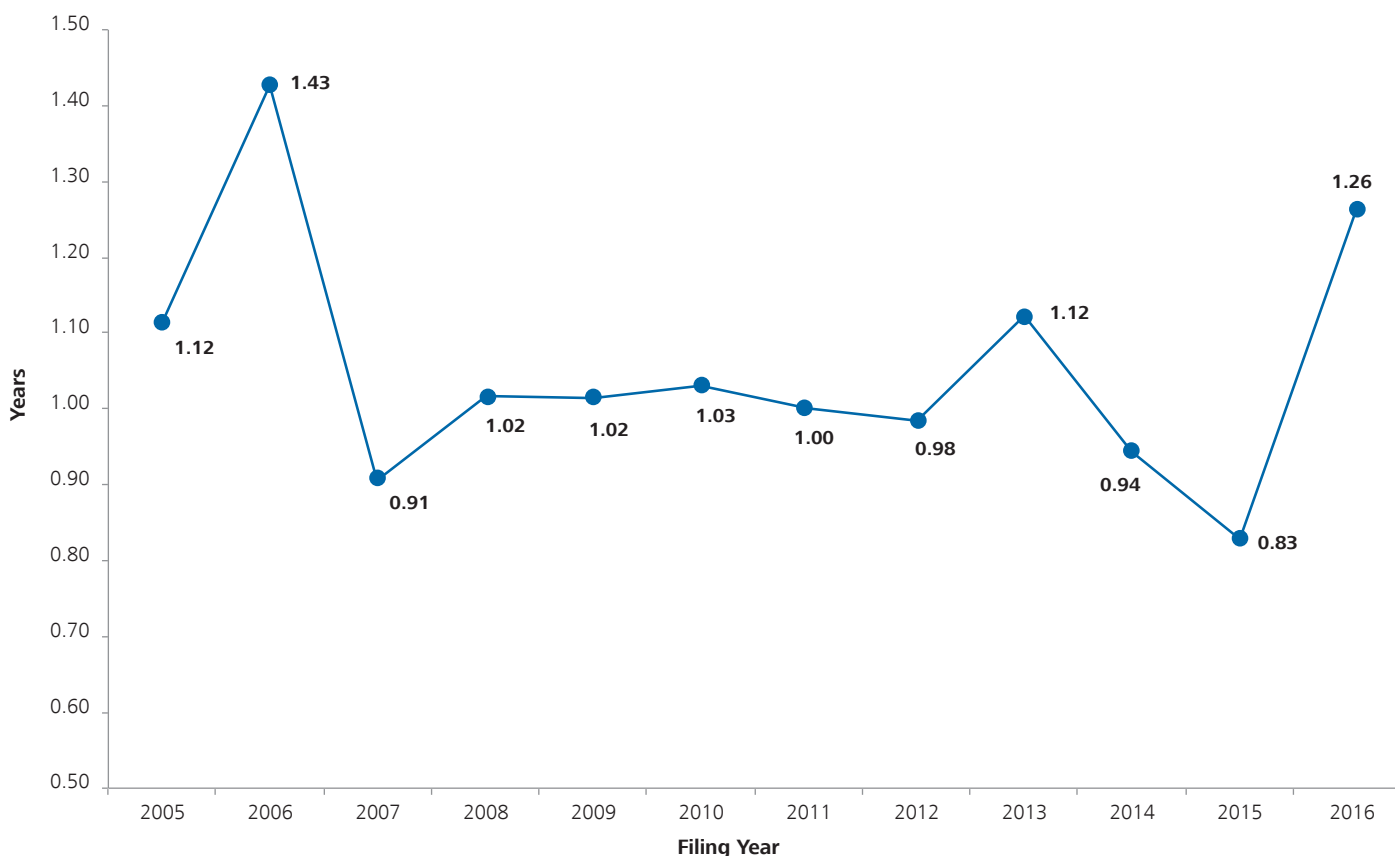
Note: This analysis excludes cases in which the alleged class period could not be unambiguously determined.

Class Period Length

The median class period was 0.83 years, a ten-year low, in 2015; in 2016, the median duration increased to more than 1.26 years (see Figure 15). This is a deviation from the longer-term trend toward shorter class periods and is partially explained by filings related to regulatory violations, which generally have longer class periods. In 2016, cases alleging regulatory violations had especially long class periods; the proportion of such filings in the top third of class period lengths rose from 29% in 2015 to 42% in 2016, and included 77% of securities cases related to industrial price collusion.

One reason class periods have generally been shorter may be that alleged malfeasance is being detected sooner.²⁷ For example, earlier detection over the last couple years may be related to recent regulatory changes. In recent years, the SEC has enacted new regulations to combat securities fraud, including a mandate that all financial statements be filed in a machine-readable format. These filing guidelines were designed to increase transparency and to facilitate more rapid detection of accounting anomalies.²⁸ For example, analysts can now use “data-scraping” programs to download financial data from numerous firms in a similar industry, so as to compare the financial figures of one company to those of its peers, enabling interested parties to more easily investigate whether an apparently unusual financial result is a reflection of something company-specific or is part of a broader industry trend. In August 2011, the SEC also adopted rules to reward individuals who expose violations of securities laws, thus motivating whistleblowers.²⁹

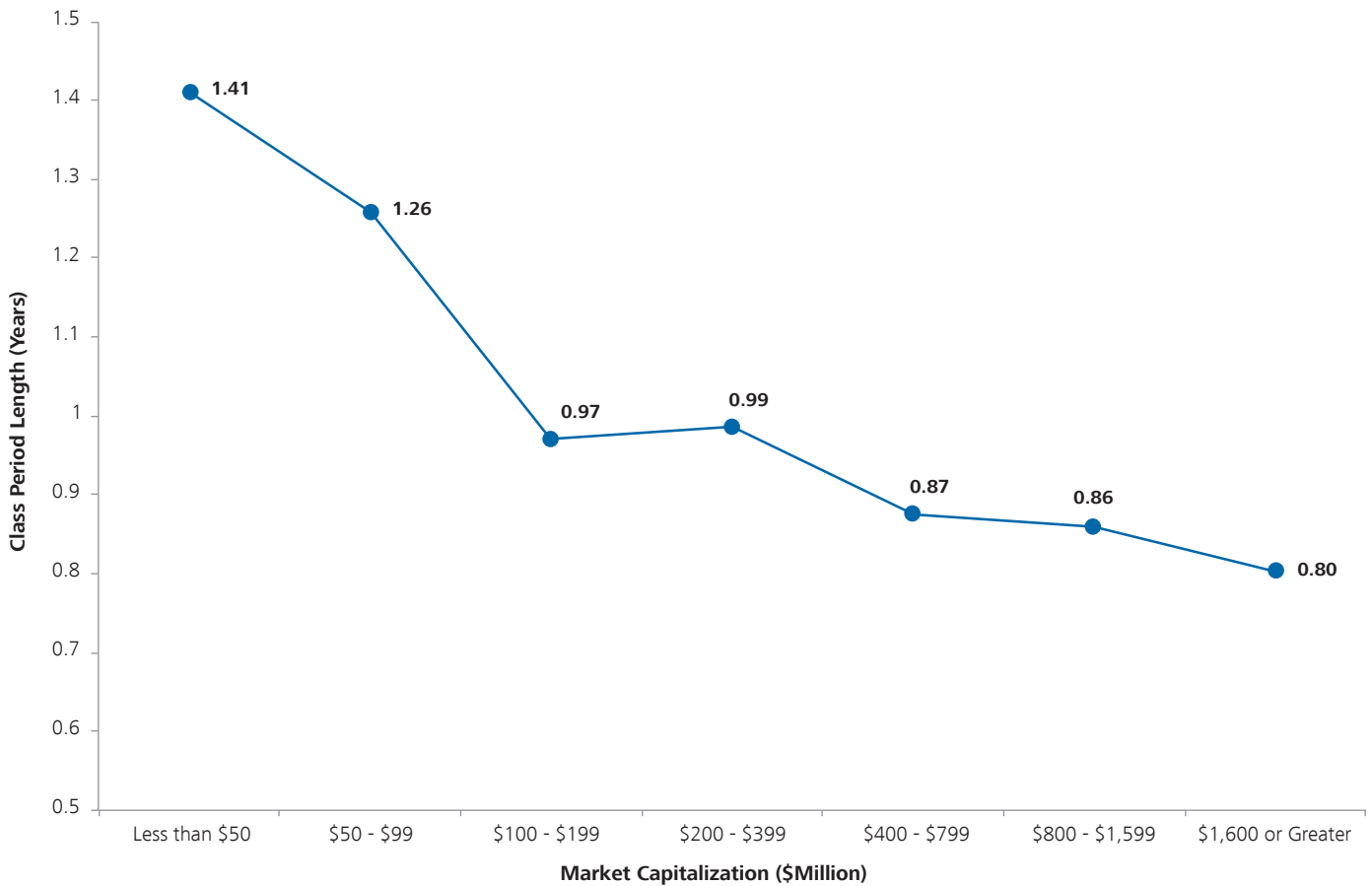
Figure 15. **Median Class Period Length**
January 2005–December 2016



Note: The figure excludes merger-objection cases, cases without class data, and class periods longer than five years.

We also observe that class period length tends to be negatively correlated with the market capitalization of the defendant firm, especially in cases not claiming failures to disclose regulatory violations (see Figure 16). Firm size may be a proxy for a firm's ability to catch or address potential errors more quickly, if larger firms likely have more comprehensive control systems. Between 2013 and 2016, the yearly median market capitalization of the primary defendant firm in 10b-5 filings not claiming failures to disclose regulatory violations was \$578 million on average, up about 27% from \$454 million between 2009 and 2012. Over this same time, class period lengths in such cases decreased.

Figure 16. **Class Period Length vs. Issuer Market Capitalization**
January 2011–December 2016



Note: The figure excludes merger-objection cases, cases without class data, and class periods longer than five years.

Analysis of Motions

NERA’s statistical analysis has found robust relationships between settlement amounts and the litigation stage at which settlements occur. We track three types of motions: motion to dismiss, motion for class certification, and motion for summary judgment. For this analysis, we track securities class actions in which holders of common stock are part of the class and in which a violation of Rule 10b-5 or Section 11 is alleged.

As shown in the below figures, we record the status of any motion as of the resolution of the case. For example, a motion to dismiss which had been granted but was later denied on appeal is recorded as denied, even if the case settles without the motion being filed again.

Motions for summary judgment were filed by defendants in 7.5%, and by plaintiffs in only 2.1%, of the securities class actions filed and resolved over the 2000-2016 period, among those we tracked.³⁰

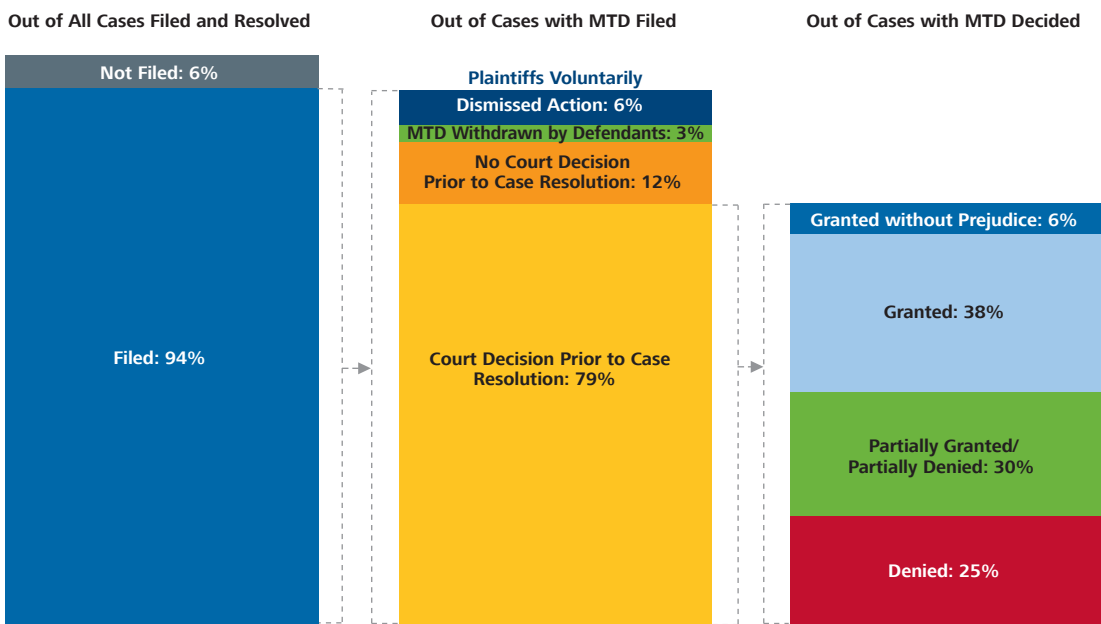
Outcomes of motions to dismiss and motions for class certification are discussed below.

Motion to Dismiss

A motion to dismiss was filed in 94% of the securities class actions tracked. However, the court reached a decision on only 79% of the motions filed. In the remaining 21% of cases in which a motion to dismiss was filed, either the case resolved before a decision was taken, plaintiffs voluntarily dismissed the action, or the motion to dismiss itself was withdrawn by defendants (see Figure 17).

Out of the motions to dismiss for which a court decision was reached, the following three outcomes classify all of the decisions: granted with or without prejudice (44%), granted in part and denied in part (30%), and denied (25%).

Figure 17. **Filing and Resolutions of Motions to Dismiss**
Cases Filed and Resolved January 2000–December 2016



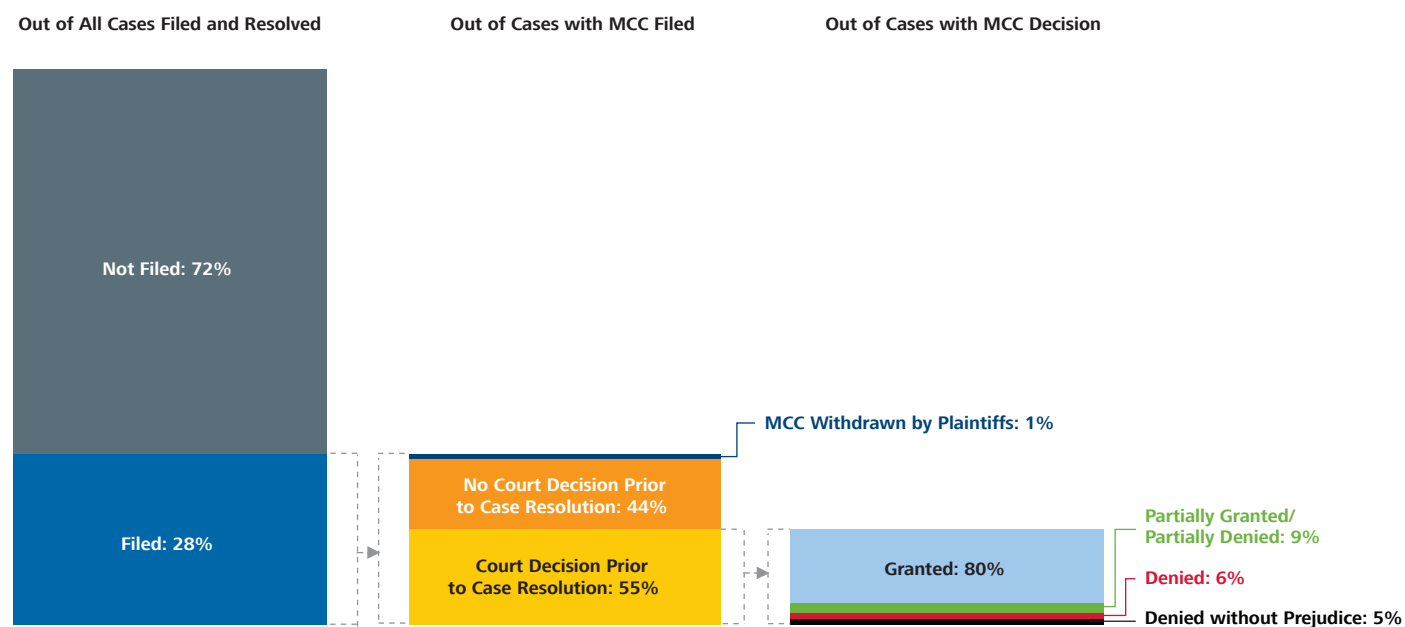
Note: Includes cases in which holders of common stock are part of the class and a 10b-5 or Section 11 violation is alleged. Excludes IPO Laddering cases.

Motion for Class Certification

Most cases were settled or dismissed before a motion for class certification was filed: 72% of cases fell into this category. Of the remaining 28%, the court reached a decision in only in 55% of the cases where a motion for class certification was filed. So, overall, only 15% of the securities class actions filed (or 55% of the 28%) reached a decision on the motion for class certification (see Figure 18).

According to our data, 89% of the motions for class certification that were decided were granted in full or partially.

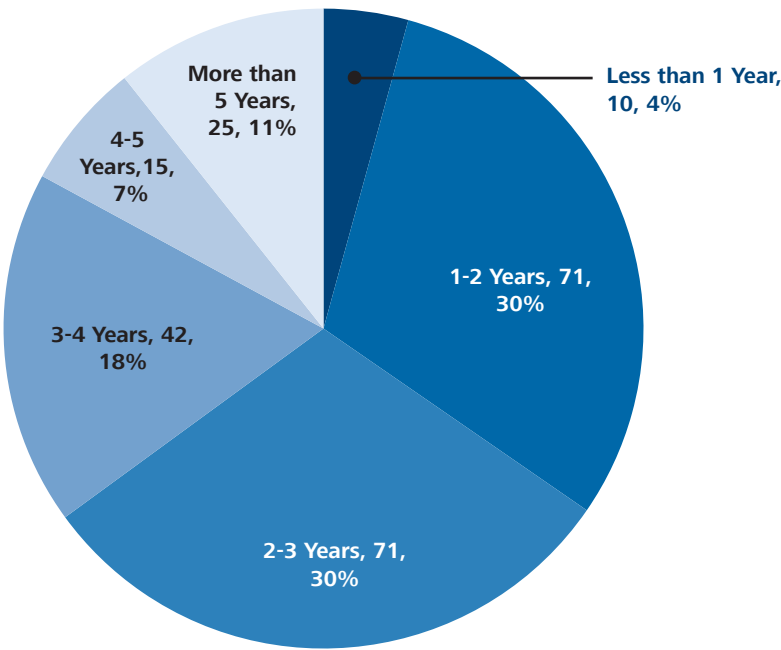
Figure 18. **Filing and Resolutions of Motions for Class Certification**
Cases Filed and Resolved January 2000–December 2016



Note: Includes cases in which holders of common stock are part of the class and a 10b-5 or Section 11 violation is alleged. Excludes IPO Laddering cases.

Approximately 64% of the decisions handed down on motions for class certification were reached within three years from the original filing date of the complaint (see Figure 19). The median time was about 2.5 years.

Figure 19. **Time from First Complaint Filing to Class Certification Decision**
Cases Filed and Resolved January 2000–December 2016



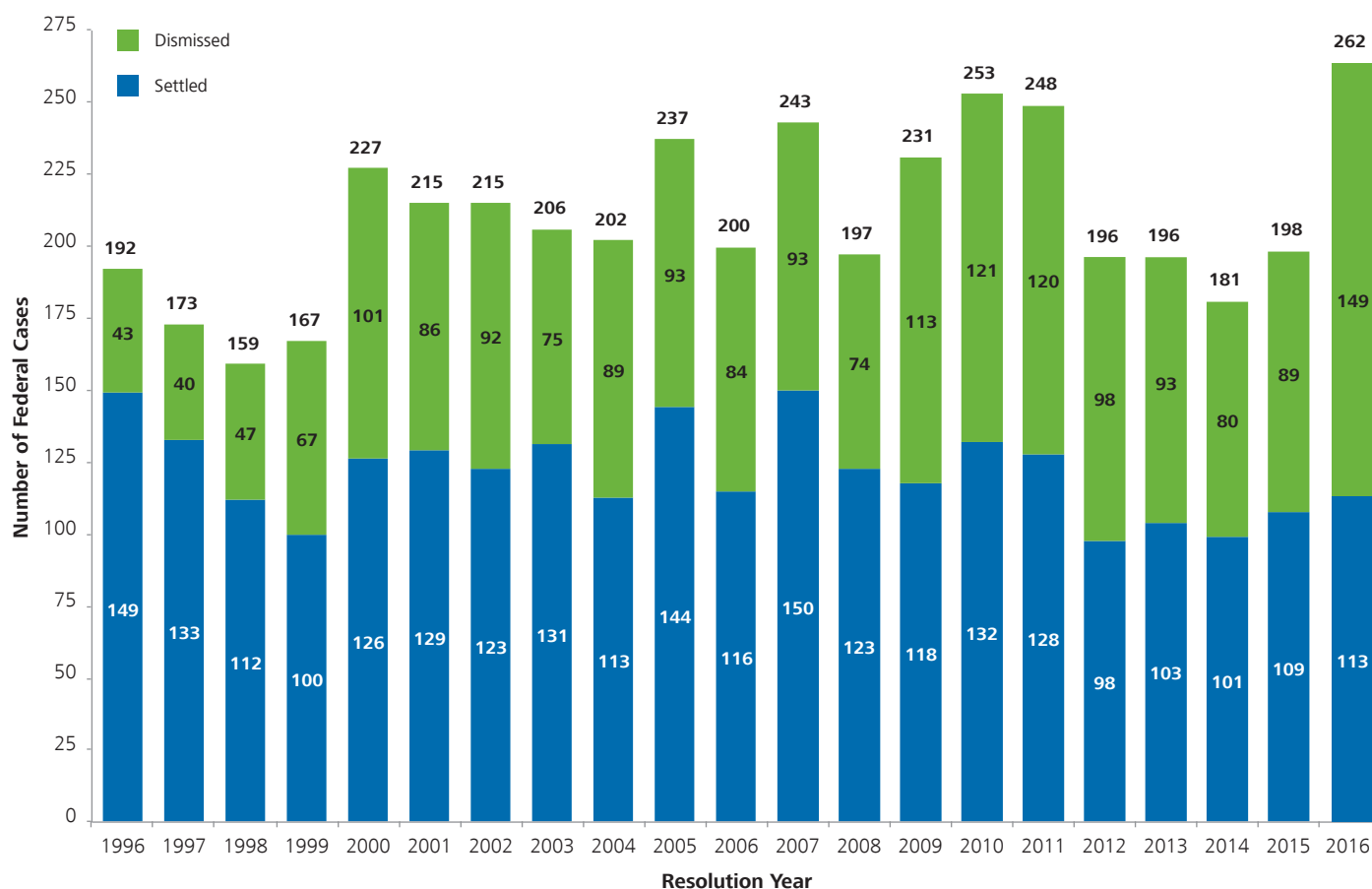
Trends in Case Resolutions

Number of Cases Settled or Dismissed

A total of 113 securities class actions settled in 2016, which is near the post-PSLRA lows seen over the prior four years (see Figure 20). Despite 2016 having the highest number of settlements since 2011, there were 12% fewer settlements in 2016 than in 2011. For the first time since passage of the PSLRA, more cases were dismissed than settled—in fact, almost a third more cases were dismissed than settled. There were a record 149 dismissals in 2016, resulting in a near-record level of overall case resolutions.

Half of the cases dismissed in 2016 were done so within about 11 months of filing, the fastest pace since passage of the PSLRA, and more than 35% lower than the five-year trailing average of 17 months. The faster time-to-dismissal rate was driven by merger-objection cases which, despite making up only 28% of all cases dismissed, made up 52% of cases dismissed in less than 11 months. Moreover, of the merger-objection cases dismissed in 2016, 88% were done so within 11 months of filing.³¹

Figure 20. **Number of Resolved Cases: Dismissed or Settled**
January 1996–December 2016



Note: Analysis excludes IPO laddering cases. Dismissals may include dismissals without prejudice and dismissals under appeal.

Case Status by Year

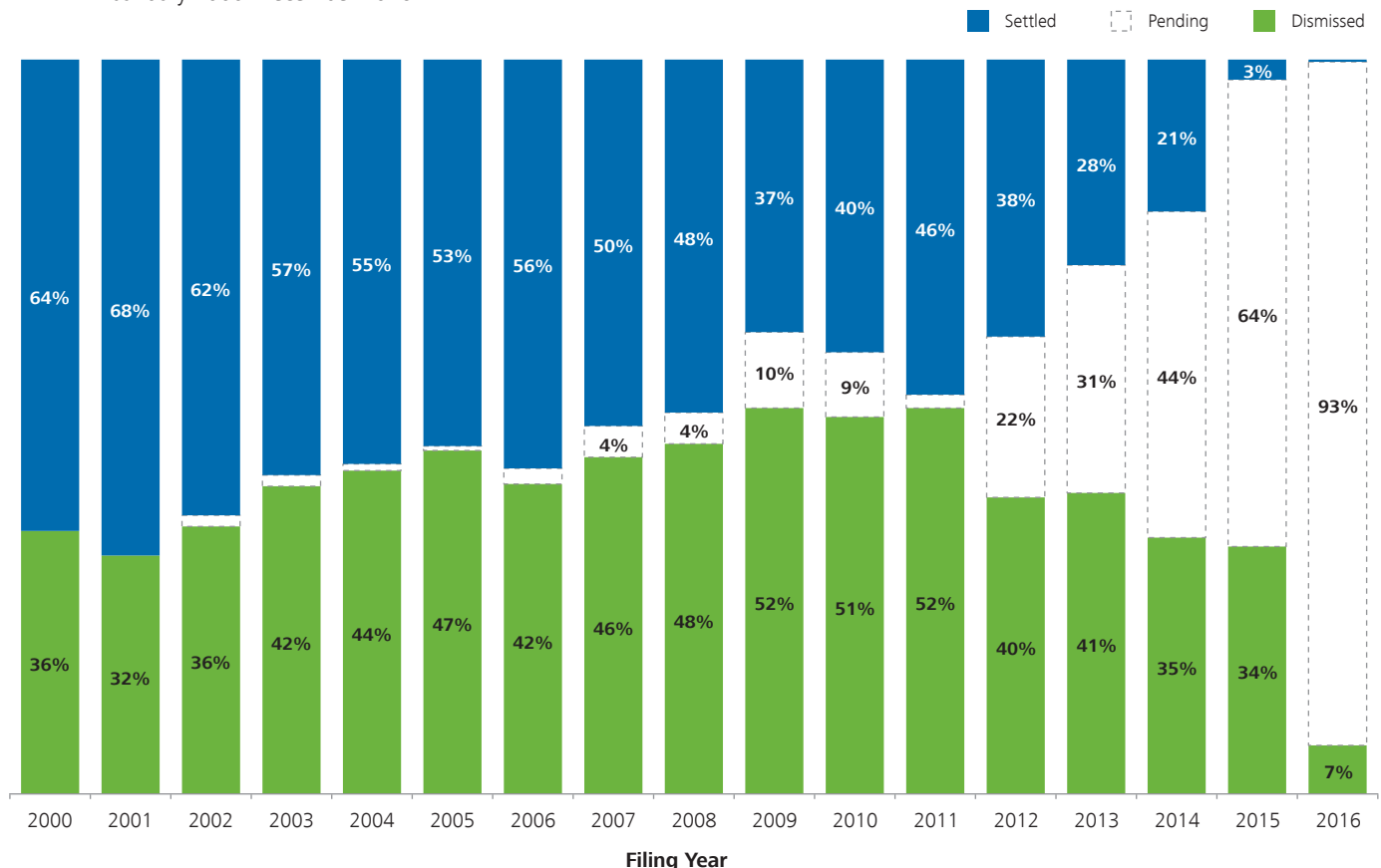
Figure 21 shows the rate of cases settled or dismissed, and the percent of pending cases by filing year. These rates are calculated as the fraction of cases by current status out of all cases filed in a given year, and they exclude IPO laddering cases, merger-objection cases, and verdicts.

The rate of case dismissal has steadily increased between the 2000 and 2011 filing years. While only about a third of cases were dismissed in the 2000-2002 filing period, cases filed between 2003 and 2007 were dismissed at a rate of about 42% to 47%. Between 2008 and 2011, the most recent years with a substantial resolution rate, about half of the cases filed were dismissed. Nearly 90% of cases filed before 2012 have been resolved, providing evidence of longer-term trends about dismissal and settlement rates.

For more recent filings, we can look at the percent of cases that were quickly resolved. We observe that seven percent of cases filed in 2016 were dismissed by the end of the year, in contrast to more than nine percent of cases filed and dismissed within calendar year 2015.³²

While dismissal rates have been climbing since 2000, at least up until 2011, the ultimate dismissal rate for cases filed in more recent years is less certain. On one hand, it may increase further, as there are more pending cases awaiting resolution. On the other hand, it may decrease because recent dismissals have more potential than older ones to be appealed or re-filed, so these cases that were recently dismissed without prejudice may ultimately result in settlements.

Figure 21. **Status of Cases as Percentage of Federal Filings by Filing Year**
January 2000–December 2016



Note: Analysis excludes IPO laddering, merger-objection cases, and verdicts. Dismissals may include dismissals without prejudice and dismissals under appeal.

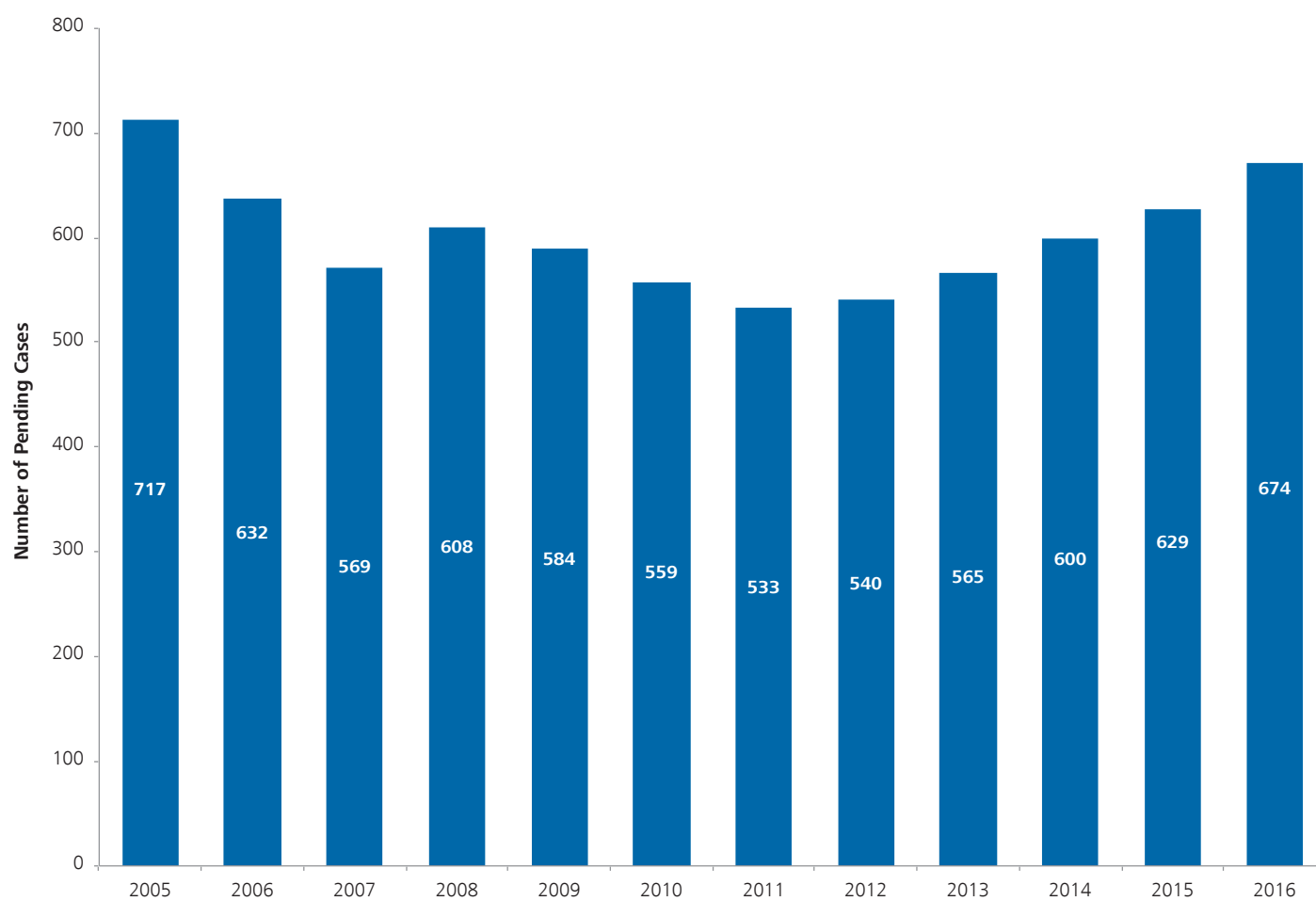
Number of Cases Pending

The number of securities class actions pending in the federal system decreased from a record high of 717 in 2005 to 533 in 2011. Since then, the number of pending cases has increased every year, reaching 674 in 2016, an increase of about 26% from the trough (see Figure 22).

Since cases are either pending or resolved, a decline in the number of filings or a lengthening of the time to case resolution also potentially contribute to changes in the number of cases pending. If the number of new filings is constant, the change in the number of pending cases can be indicative of whether the time to case resolution is generally shortening or lengthening.

In 2016, the seven percent increase in pending cases over the prior year stemmed from the record number of filings, which was only partially offset by the record number of case resolutions (most of which were dismissals). Given the relatively constant case filing rate until this year, the increase in pending cases between 2012 and 2015 suggests a slowdown of the resolution process.

Figure 22. **Number of Pending Federal Cases**
January 2005–December 2016



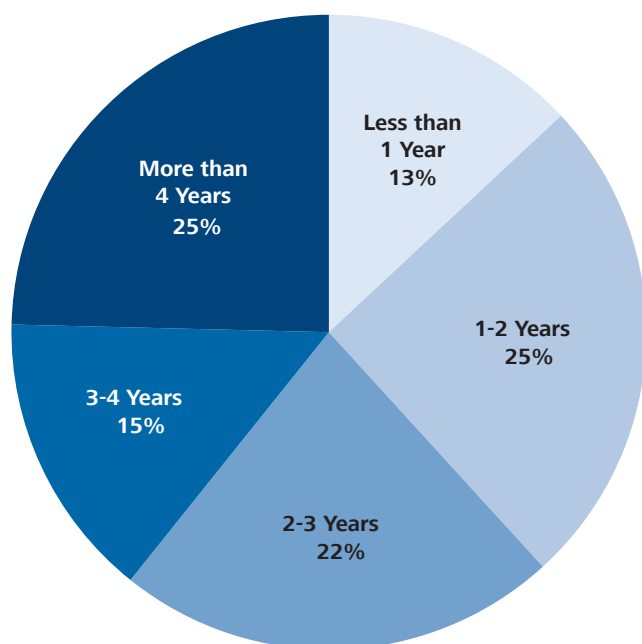
Note: The figure excludes, in each year, cases that had been filed more than eight years earlier. The figure also excludes IPO laddering cases.

Time to Resolution

The term “time to resolution” denotes the time between the filing of the first complaint and resolution (whether through settlement or dismissal). Figure 23 illustrates the time to resolution for all securities class actions filed between 2001 and 2012, and shows that almost 40% of cases are resolved within two years of initial filing and about 60% are resolved within three years.³³

The median time to resolution for cases filed in 2014 was 2.4 years, similar to the range over the past five years. Over the past decade, the median time to resolution declined by more than 10%, primarily due to an increase in the dismissal rate (dismissals are generally resolved faster than settlements) and due to shorter times to case settlement, as opposed to a shortening of the time it takes for cases to be dismissed.

Figure 23. **Time from First Complaint Filing to Resolution**
Cases Filed January 2001–December 2012



Trends in Settlements

We present several settlement metrics to highlight attributes of cases that settled in 2016 and to compare them with cases settled in past years. We discuss two ways of measuring average settlement amounts and calculate the median settlement amount. Each calculation excludes IPO laddering cases, merger-objection cases, and cases that settle with no cash payment to the class, as settlements of such cases may obscure trends in what have historically been more typical cases.

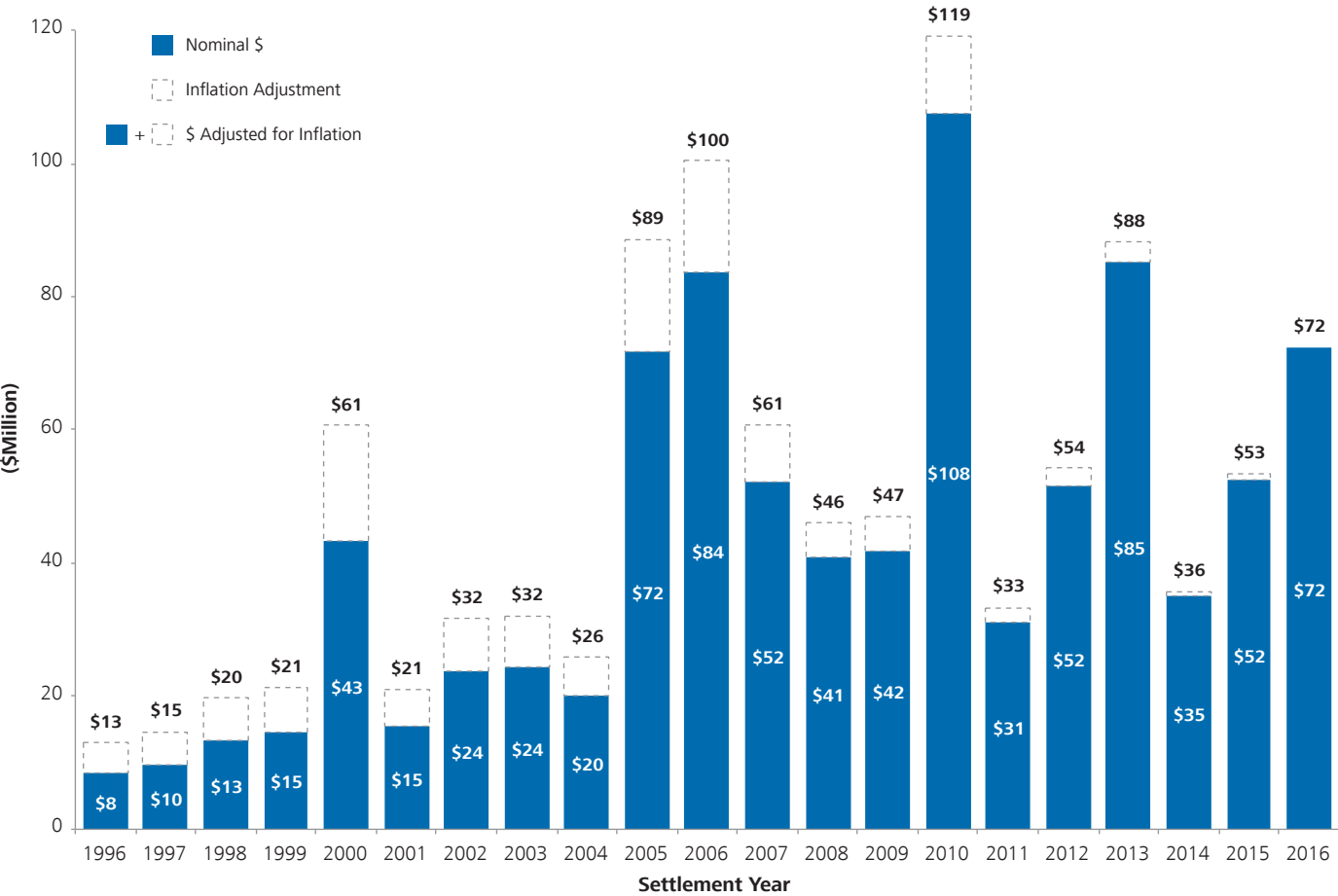
The average settlement amount increased substantially for a second straight year, reaching \$72 million in 2016, up by more than 35% compared to the 2015 figure. Excluding cases that settled for more than \$1 billion dollars, the average settlement amount for 2016 fell to \$43 million from last year's near-record \$53 million. The median 2016 settlement amount, which is more robust to extreme values, increased by more than a fifth from the 2015 median of \$9.1 million.

The settlement of two longstanding large cases in 2016 affected the average settlement statistics. To illustrate how many cases settled over various ranges in 2016 compared to prior years, we provide a distribution of settlements over the past five years. To supplement this, we tabulate the 10 largest settlements of the year.

Average and Median Settlement Amounts

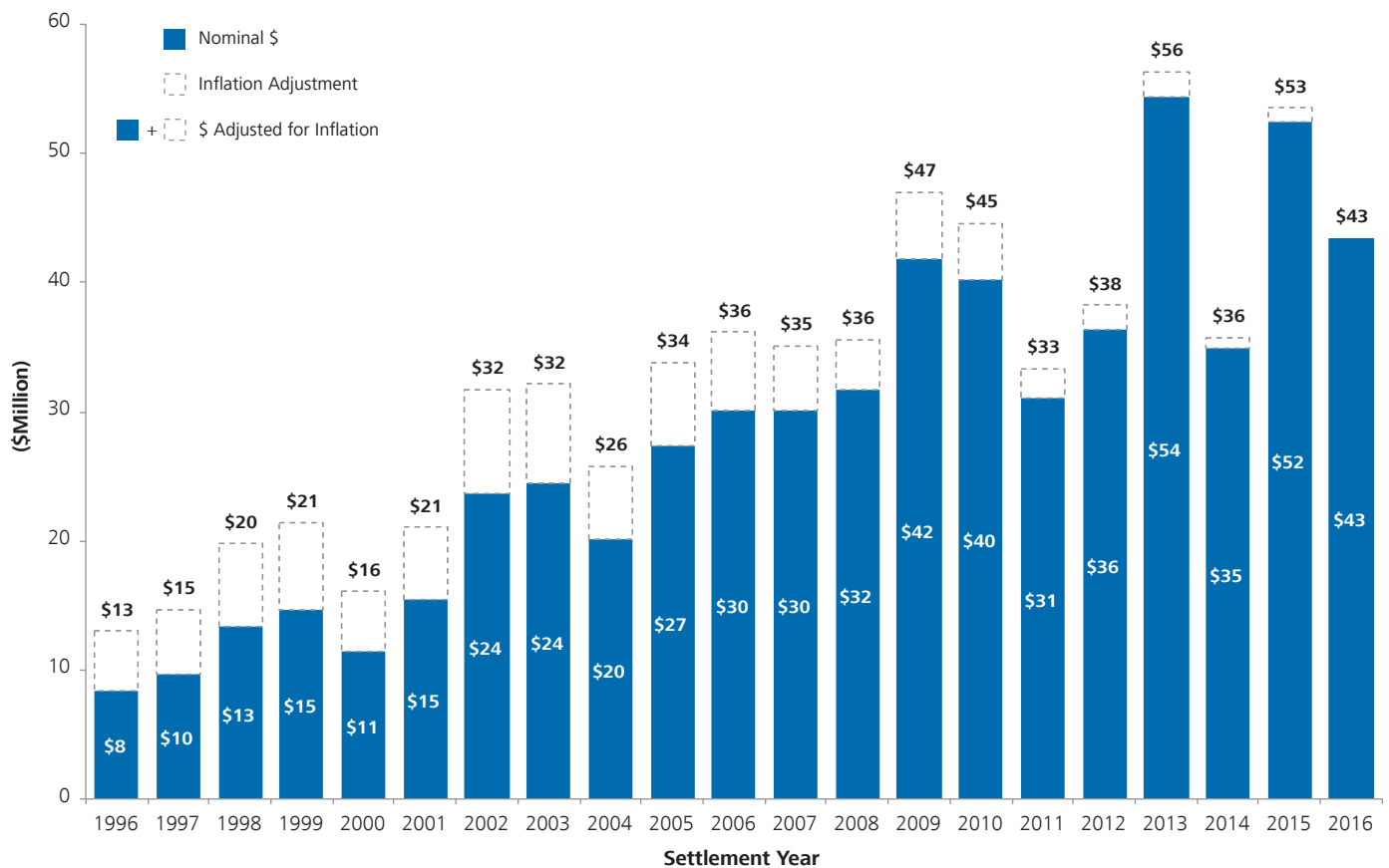
The average settlement amount exceeded \$72 million in 2016, an increase of more than 35% over the average of \$53 million in 2015, adjusted for inflation (see Figure 24). This follows a steep 47% increase in 2015 from a near ten-year low of \$36 million in 2014. Infrequent large settlements are generally responsible for the wide variability in average settlement amounts over the past decade. For example, without the settlements of *WorldCom, Inc.* in 2005 and *Enron Corp.* in 2010, the average settlement amounts in those years would have been more than 60% lower.

Figure 24. **Average Settlement Value—Excluding IPO Laddering, Merger Objections, and Settlements for \$0 to the Class**
January 1996–December 2016



Excluding two settlements that exceed \$1 billion to account for these extreme outliers, the average 2016 settlement amount was \$43 million, a decrease of 19% over 2015, adjusted for inflation (see Figure 25). Despite the year-over-year decline, the average settlement amount for 2016 was still higher than the five-year average and substantially higher than the average since passage of the PSLRA, fitting the general uptrend in average settlement amounts since passage of that regulation. Unlike in 2014 and in 2015, there were settlements for more than \$1 billion in 2016. Specifically, the longstanding *Household International, Inc.* (N.D. Ill.) case settled for more than \$1.5 billion, and the *Merck & Co., Inc.* (E.D. La.) case settled for slightly more than \$1 billion.

Figure 25. **Average Settlement Value—Excluding Settlements over \$1 Billion and Excluding IPO Laddering, Merger Objections, and Settlements for \$0 to the Class**
January 1996–December 2016

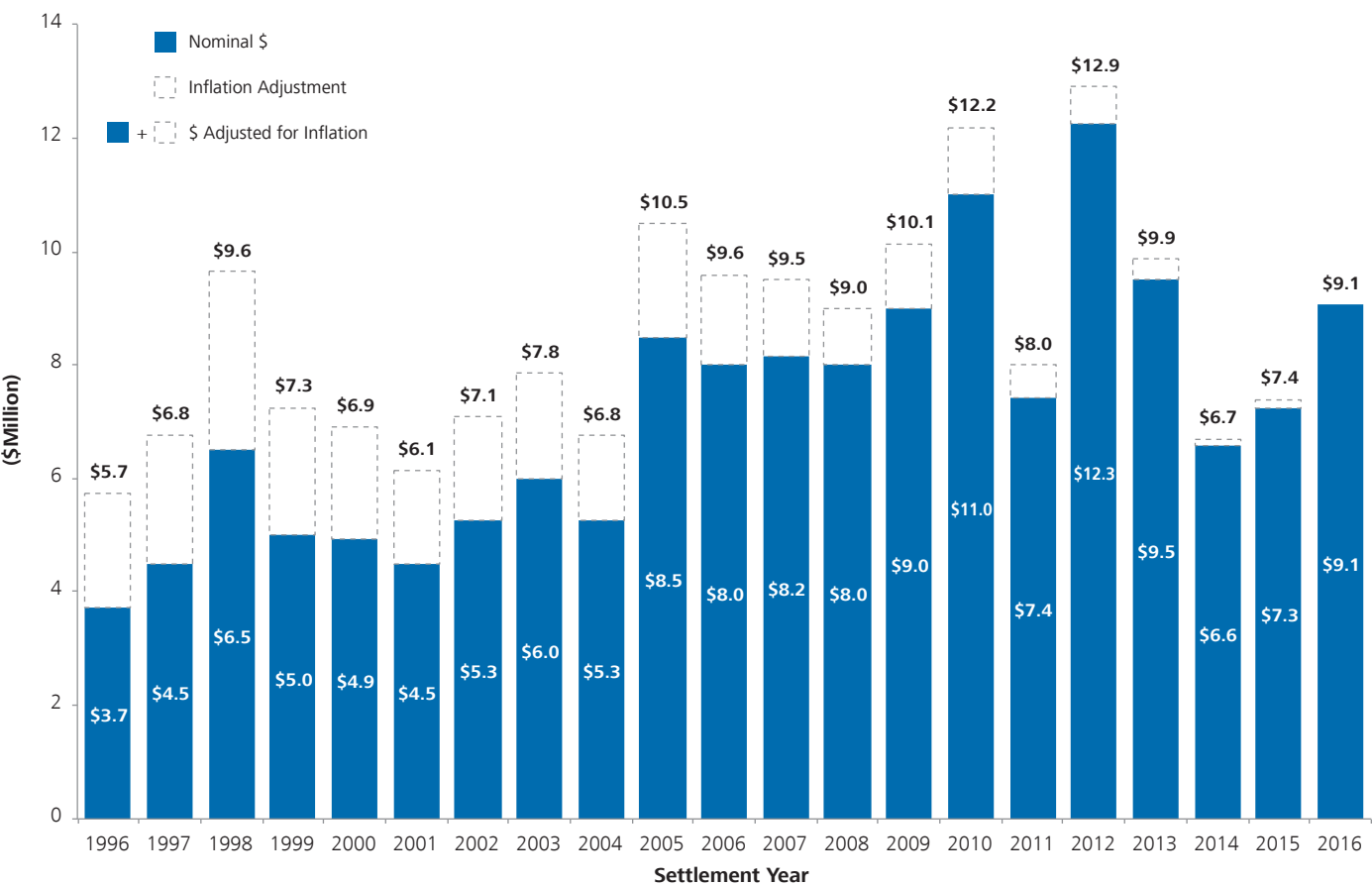


Inclusion of these two very large settlements pushed the overall 2016 average settlement amount up by more than 67%.

Even though the average settlement amount for each year has increased over the last two decades, cases have not become dramatically more expensive to settle across the board over the long term. The 2016 median settlement amount, or the amount that is larger than half of the settlement values over the year, is within the range of median settlements between 2005 and 2009, after adjusting for inflation (see Figure 26).

The ten-year trend in average and median settlements reflects two different facets of settlement activity: a few large settlements drove up the average, while many small settlements kept the median relatively stable.

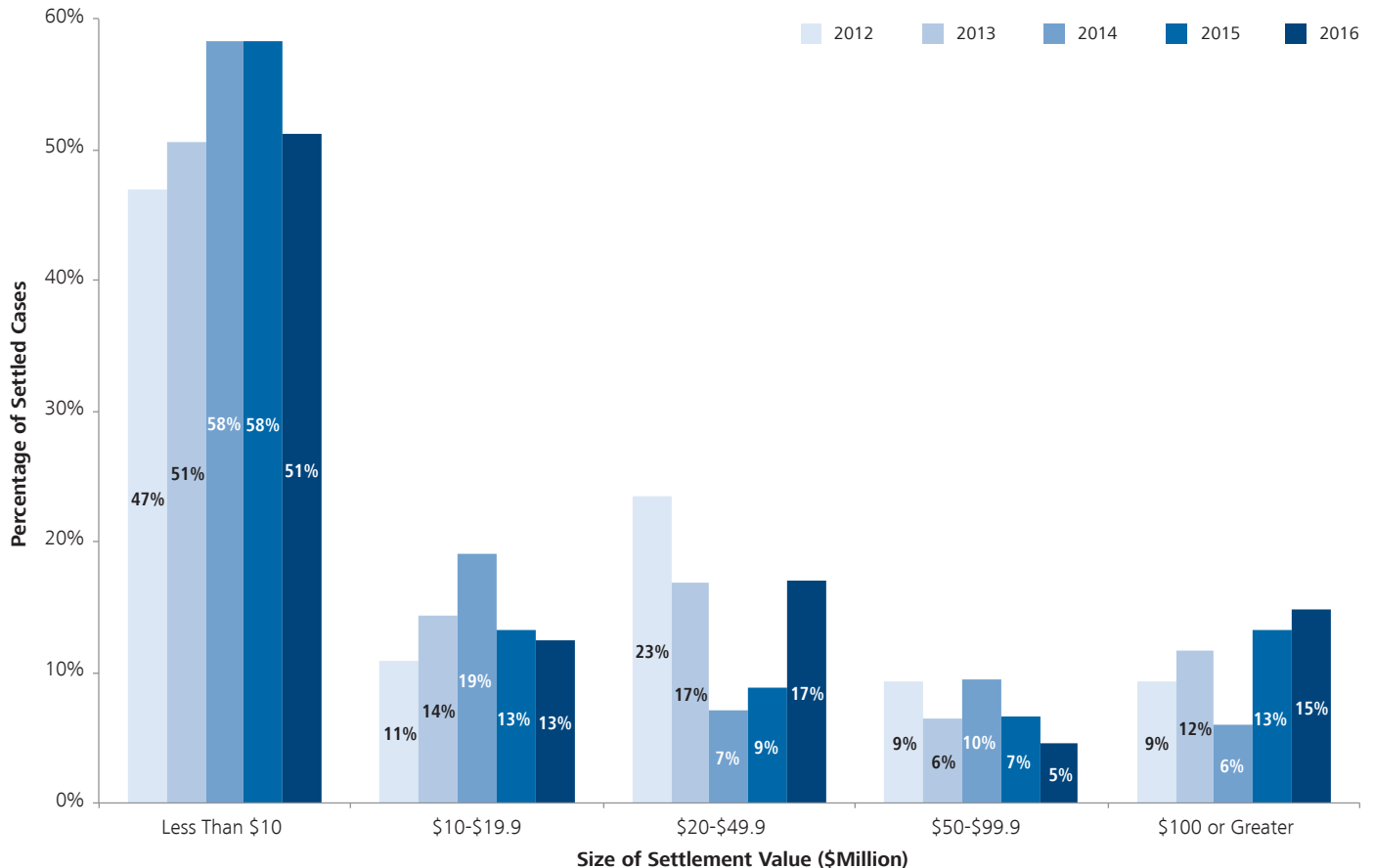
Figure 26. **Median Settlement Value—Excluding IPO Laddering, Merger Objections, and Settlements for \$0 to the Class**
January 1996–December 2016



Distribution of Settlement Amounts

The second consecutive yearly jump in average settlement amounts was partially driven by settlements of an increasing number of cases for more than \$100 million (see Figure 27). The fraction of cases that settled for more than \$100 million reached nearly 15% in 2016, the highest since passage of the PSLRA.³⁴ While more than half of cases with a cash settlement in 2016 settled for less than \$10 million, this represented a decrease from the previous two years as settlements shifted toward the middle and upper tail of the distribution.

Figure 27. **Distribution of Settlement Values—Excluding Merger Objections and Settlements for \$0 to the Class**
January 2012–December 2016



The Ten Largest Settlements of Securities Class Actions of 2016

The 10 largest securities class action settlements of 2016 are shown in Table 1. Six of the 10 largest settlements involved defendants in the Finance sector, as was the case in 2015. Overall, these ten cases accounted for more than \$4.8 billion out of about \$6.4 billion in aggregate settlements (76%) over the period. The largest, *Household International, Inc.* (N.D. Ill.), settled for \$1,576.5 million, making up nearly a quarter of total dollars spent on settling litigation during the year.

Until the later *Household International* settlement, the settlement of the *Merck & Co., Inc.* (E.D. La.) litigation for \$1,062 million in early 2016 was also within the top 10 largest settlements on record. While large, these settlements are still only a fraction of the largest historical settlements. *Enron Corp.* settled for more than \$7.2 billion in aggregate settlements, while *Bank of America Corp.* settled for more than \$2.4 billion in 2013 and was largest Finance sector settlement ever (see Table 2).

Table 1. **Top 10 2016 Securities Class Action Settlements**

Ranking	Defendant	Total Settlement Value (\$Million)	Plaintiffs' Attorneys' Fees and Expenses Value (\$Million)
1	Household International, Inc.	\$1,577	\$427
2	Merck & Co., Inc. (2003)	\$1,062	\$232
3	Pfizer Inc. (2004)	\$486	\$171
4	Bank of America Corporation (2011) (MERS and MBS)	\$335	\$54
5	General Motors Company	\$300	\$22
6	GS Mortgage Securities Corp. (2008)	\$272	\$59
7	MF Global Holdings Ltd.	\$234	N/A
8	Genworth Financial, Inc. (2014)	\$219	\$65
9	HCA Holdings, Inc.	\$215	\$67
10	JPMorgan Chase & Co.	\$150	\$40
	Total	\$4,850	\$1,136

Table 2. **Top 10 Securities Class Action Settlements**
As of 31 December 2016

Ranking	Defendant	Settlement Years	Total Settlement Value (\$Million)	Settlements with Co-Defendants that Were		
				Financial Institutions Value (\$Million)	Accounting Firms Value (\$Million)	Plaintiffs' Attorneys' Fees and Expenses Value (\$Million)
1	ENRON Corp.	2003-2010	\$7,242	\$6,903	\$73	\$798
2	WorldCom, Inc.	2004-2005	\$6,196	\$6,004	\$103	\$530
3	Cendant Corp.	2000	\$3,692	\$342	\$467	\$324
4	Tyco International Ltd.	2007	\$3,200	No Co-Defendant	\$225	\$493
5	AOL Time Warner Inc.	2006	\$2,650	No Co-Defendant	\$100	\$151
6	Bank of America Corp.	2013	\$2,425	No Co-Defendant	No Co-Defendant	\$177
7	Household International, Inc.	2006-2016	\$1,577	\$1.5	Dismissed	\$427
8	Nortel Networks (I)	2006	\$1,143	No Co-Defendant	\$0	\$94
9	Royal Ahold NV	2006	\$1,100	\$0	\$0	\$170
10	Nortel Networks (II)	2006	\$1,074	No Co-Defendant	\$0	\$89
	Total		\$30,298	\$13,250	\$967	\$3,252

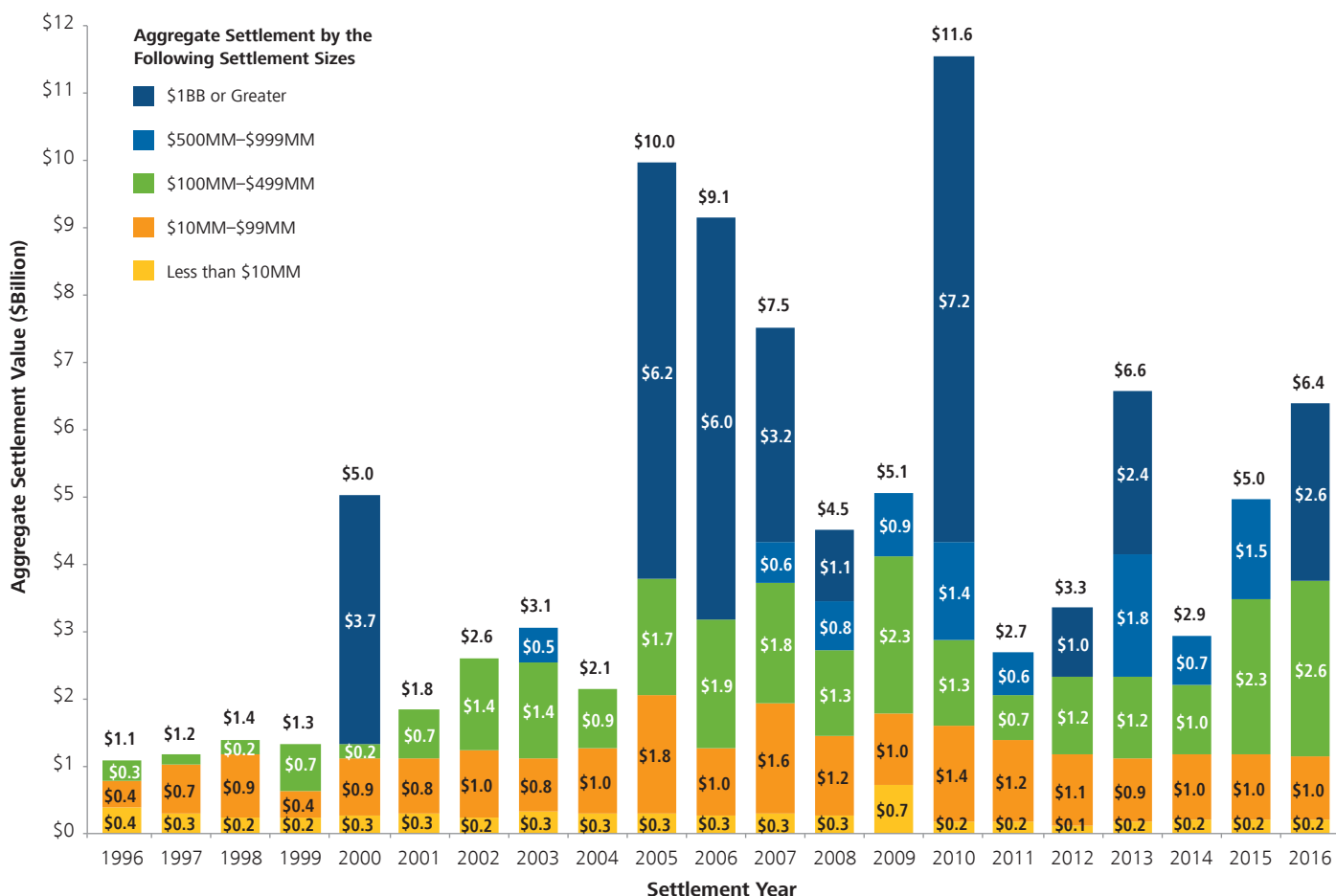
Aggregate Settlements

We use the term “aggregate settlements” to denote the total amount of money to be paid as settlement by (non-dismissed) defendants based on the court-approved settlements during a year.

Aggregate settlements were about \$6.4 billion in 2016, a 28% increase from last year and more than double the amount in 2014 (see Figure 28). Although aggregate settlements are at their second highest level since 2010, this result was driven by the settlement of two longstanding very large cases; no cases settled for between \$500 million and \$1 billion.

Figure 28 reinforces the point that much of the large fluctuation in aggregate settlements, especially since 2005, are driven by cases that settle for more than \$1 billion. In contrast, settlements under \$10 million, despite often accounting for the majority of settlements in a given year, account for a very small fraction of aggregate settlements.

Figure 28. **Aggregate Settlement Value by Settlement Size**
January 1996–December 2016



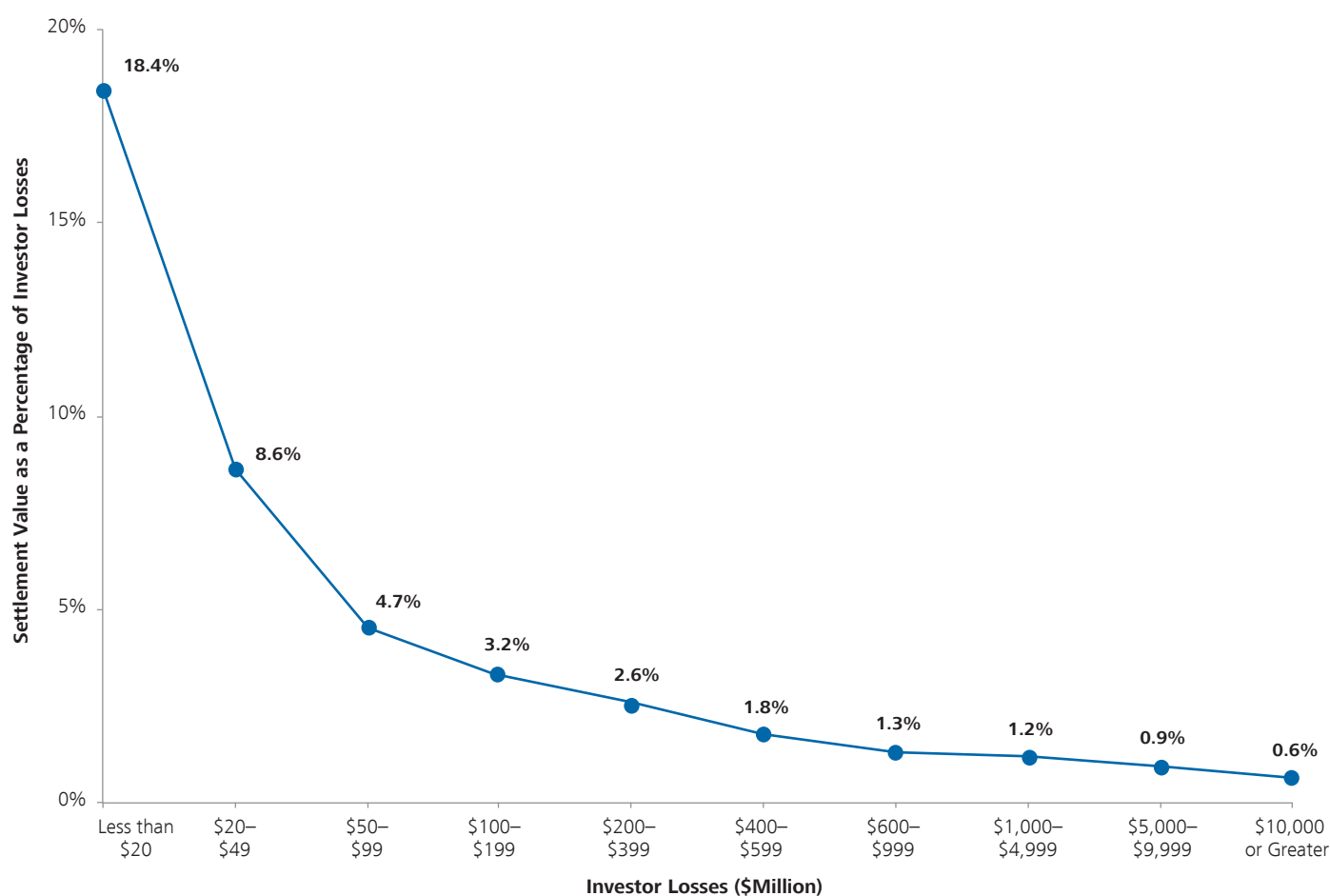
NERA-Defined Investor Losses vs. Settlements

As noted above, our proxy for case size, NERA-defined Investor Losses, is a measure of the aggregate amount that investors lost from buying the defendant's stock rather than investing in the broader market during the alleged class period.

In general, settlement size grows as NERA-defined Investor Losses grow, but the relation is not linear. Settlement size grows less than proportionately with Investor Losses, based on our analysis of data from 1996 to 2016. Small cases typically settle for a higher fraction of Investor Losses (i.e., more cents on the dollar) than larger cases. For example, the median ratio of settlement to Investor Loss was 18.4% for cases with Investor Losses of less than \$20 million, while it was 0.6% for cases with Investor Losses over \$10 billion (see Figure 29).

Our findings about the ratio of settlement amount to NERA-defined Investor Losses should not be interpreted as the share of damages recovered in settlement but rather as the recovery compared to a rough measure of the "size" of the case. Notably, the percentages given here apply *only* to NERA-defined Investor Losses. Use of a different definition of investor losses would result in a different ratio.

Figure 29. **Median of Settlement Value as a Percentage of NERA-Defined Investor Losses by Level of Investor Losses**
January 1996–December 2016



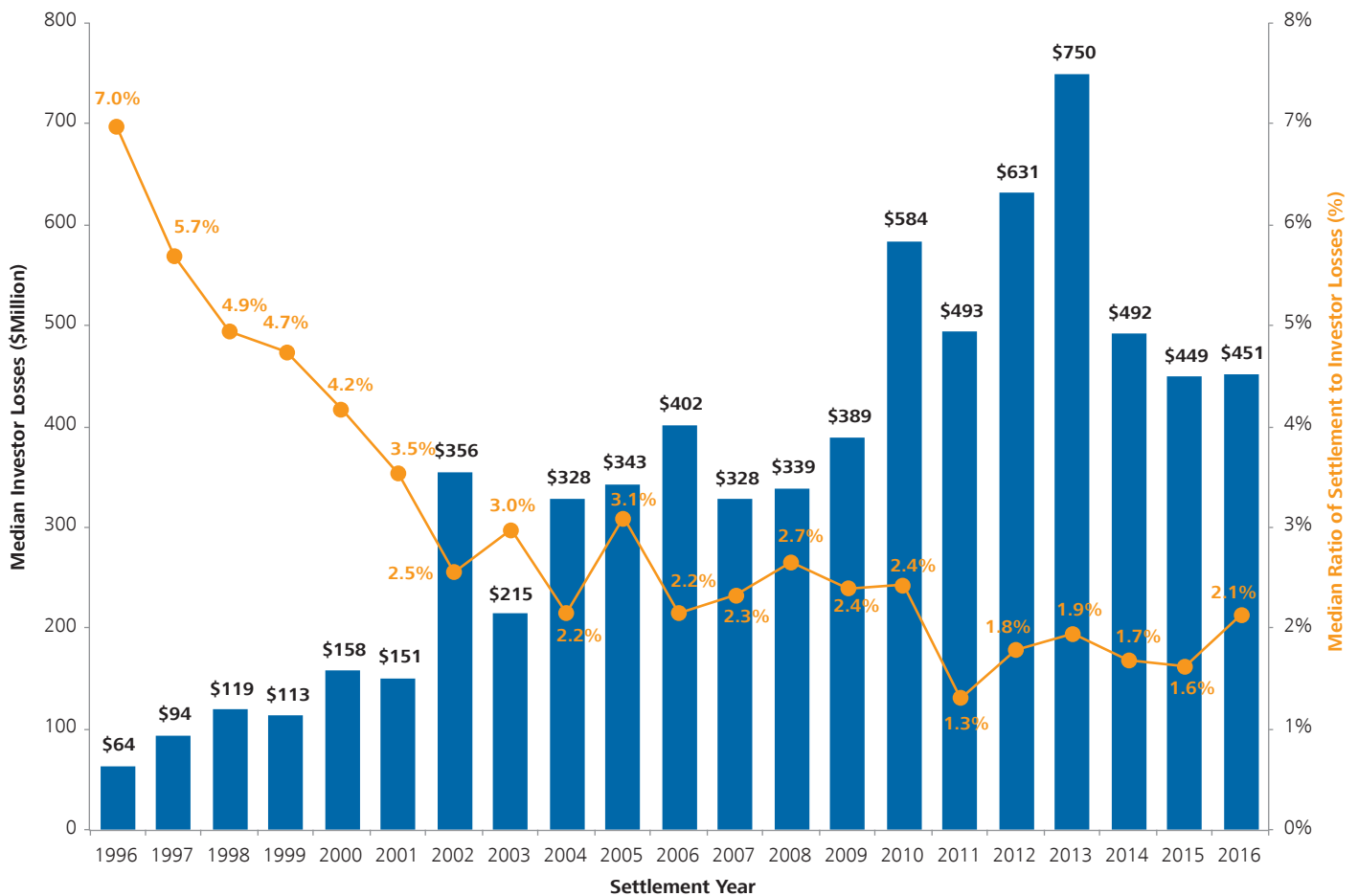
Note: Excludes settlements for \$0 to the class.

Median NERA-Defined Investor Losses over Time

Median NERA-defined Investor Losses for settled cases have been on an upward trend since passage of the PSLRA. As described above, the median ratio of settlement size to Investor Losses generally decreases as Investor Losses increase. Over time, the increase in median Investor Losses has coincided with a decreasing trend in the median ratio of settlement to Investor Losses. Of course, there are year-to-year fluctuations.

As shown in Figure 30, the median ratio of settlements to NERA-defined Investor Losses was 1.6% in 2015. In 2016, the overall ratio increased to 2.1%, the highest level since 2010.

Figure 30. **Median NERA-Defined Investor Losses and Median Ratio of Settlement to Investor Losses by Settlement Year**
January 1996–December 2016



Explaining Settlement Amounts

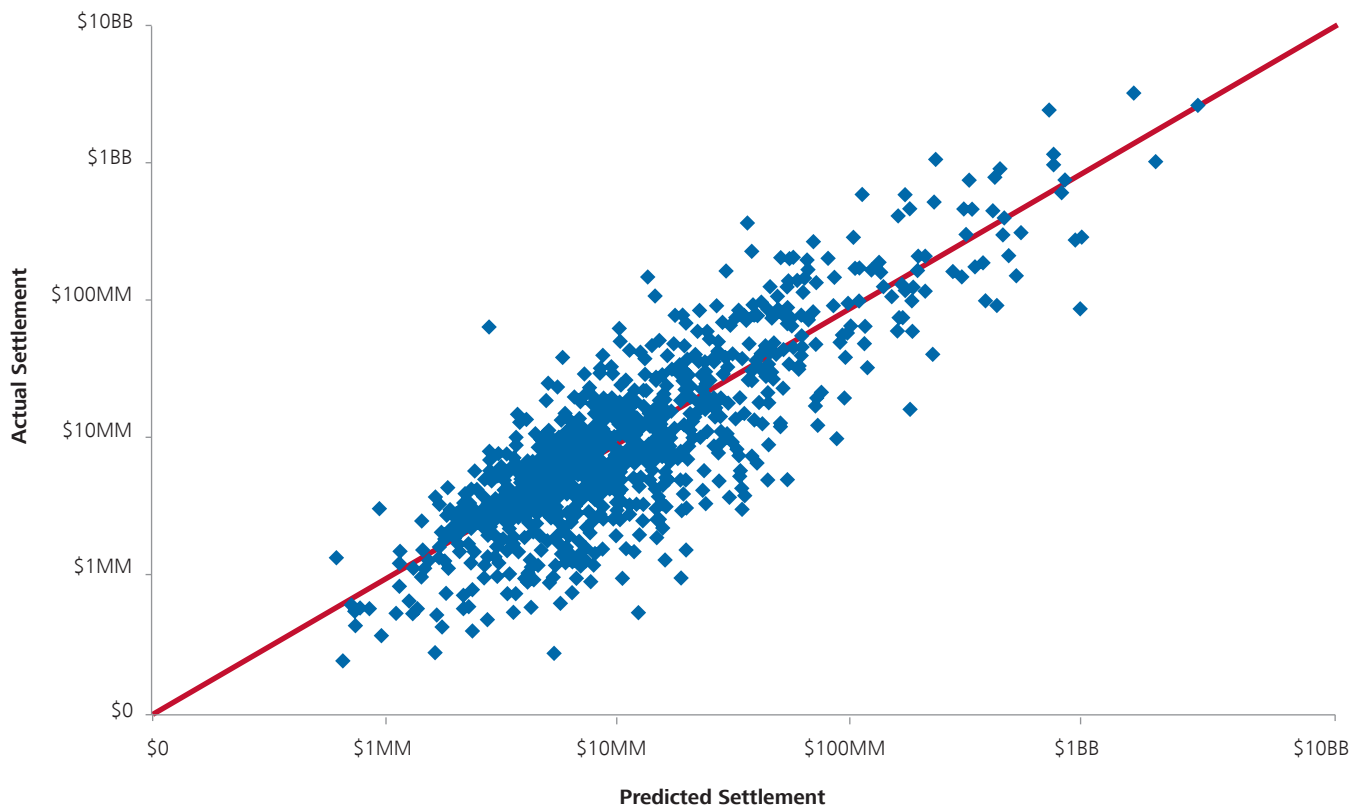
The historical relationship between case attributes and other case- and industry-specific factors can be used to measure the factors that are correlated with settlement amounts. NERA has examined settlements in more than 1,000 securities class actions and identified key drivers of settlement amounts, many of which have been summarized in this report.

Generally, we find that the following factors have historically been significantly correlated with settlements:

- NERA-defined Investor Losses (a proxy for the size of the case);
- The market capitalization of the issuer;
- Types of securities alleged to have been affected by the fraud;
- Variables that serve as a proxy for the “merit” of plaintiffs’ allegations (such as whether the company has already been sanctioned by a governmental or regulatory agency or paid a fine in connection with the allegations);
- Admitted accounting irregularities or restated financial statements;
- The existence of a parallel derivative litigation; and
- An institution or public pension fund as lead plaintiff.

Together, these characteristics and others explain most of the variation in settlement amounts, as illustrated in Figure 31.³⁵

Figure 31. **Predicted vs. Actual Settlements**



Plaintiffs' Attorneys' Fees and Expenses

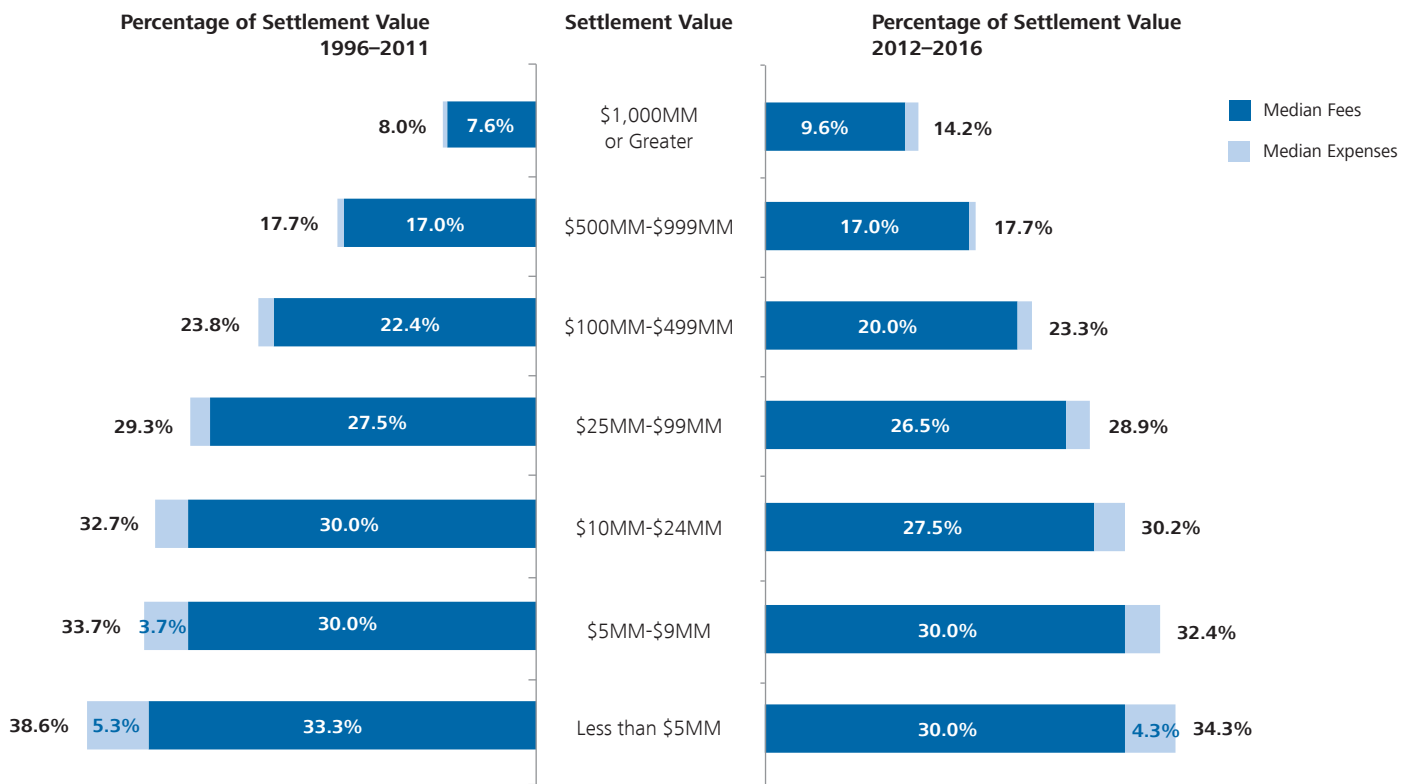
Usually, plaintiffs' attorneys' remuneration is determined as a fraction of any settlement amount in the form of fees, plus expenses. Figure 32 depicts plaintiffs' attorneys' fees and expenses as a proportion of settlement values over ranges of settlement amounts. The data shown in this figure excludes settlements for merger-objection cases and cases with no cash payment to the class.

A strong pattern is evident in Figure 32: typically, fees grow with settlement size but less than proportionally (i.e., the fee percentage shrinks as the settlement size grows).

To illustrate that the fee percentage typically shrinks as settlement size grows, we grouped settlements by settlement value and reported the median fee percentage for each group. While fees are stable at around 30% of settlements below \$10 million, they clearly decline with settlement size.

We also observe that fee percentages have been decreasing over time, except for fees awarded on very large settlements. For settlements above \$1 billion, fee rates have increased.

Figure 32. **Median of Plaintiffs' Attorneys' Fees and Expenses by Size of Settlement**



Notes: Excludes merger objections and settlements for \$0 to the class.

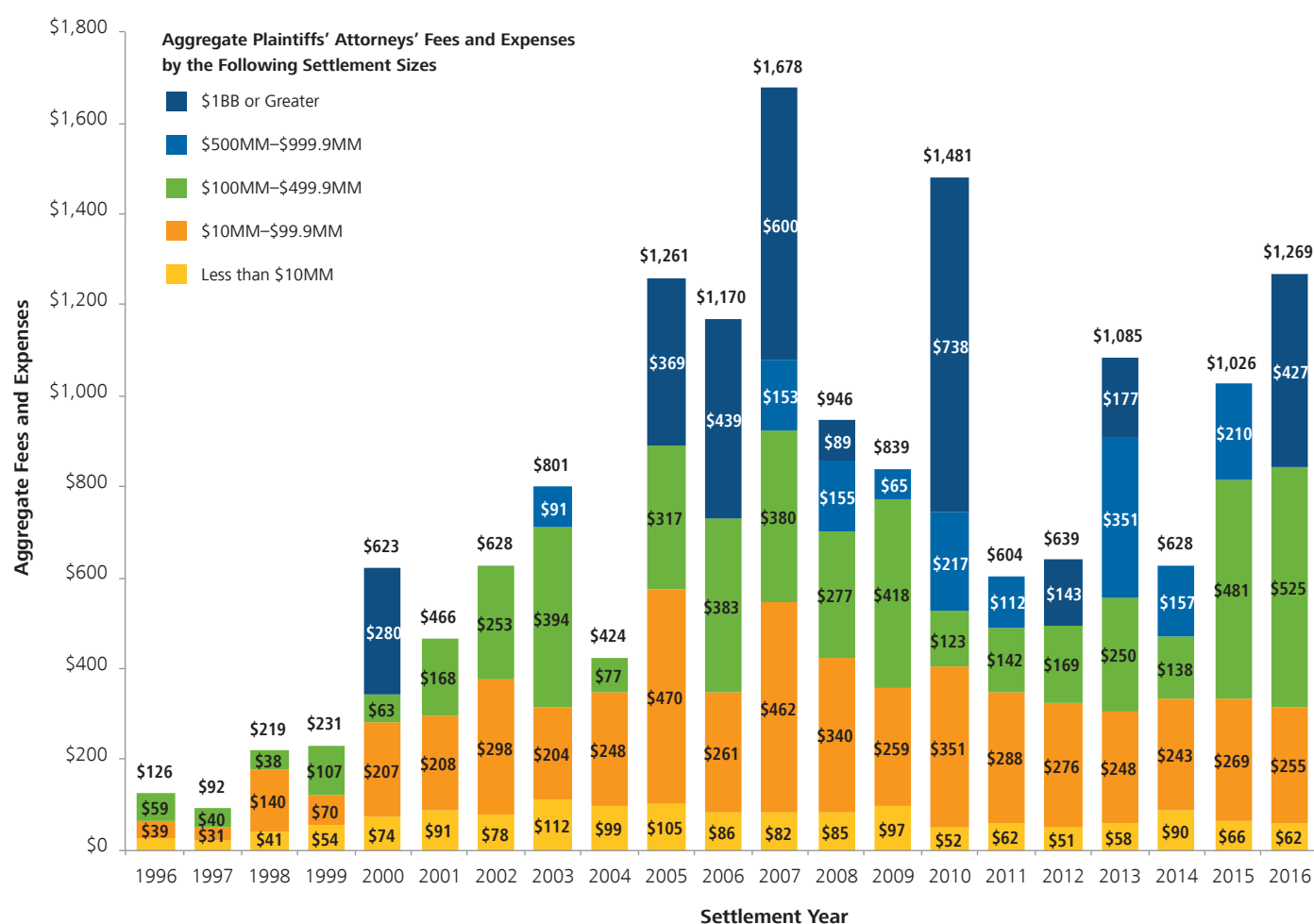
Aggregate Plaintiffs' Attorneys' Fees and Expenses

Aggregate plaintiffs' attorneys' fees and expenses are the sum of all fees and expenses received by plaintiffs' attorneys for all securities class actions that receive judicial approval in a given year.

In 2016, aggregate plaintiffs' attorneys' fees and expenses were \$1.269 billion, an increase of nearly 24% over 2015 and mirroring the increase in settlement amounts discussed earlier (see Figure 33).

Note that this figure differs from the other figures in this section, because the aggregate includes fees and expenses that plaintiffs' attorneys receive for settlements in which no cash payment was made to the class.

Figure 33. **Aggregate Plaintiffs' Attorneys' Fees and Expenses by Settlement Size**
January 1996–December 2016



Trials

Very few securities class actions reach the trial stage and even fewer reach a verdict. Table 3 summarizes the outcome for all federal securities class actions that went to trial among almost 5,000 that were filed since the passage of the PSLRA. Only 21 cases have gone to trial, and only 16 have reached a verdict or a judgment.

In 2015, HSBC won a reversal of an earlier \$2.46 billion judgment in a securities class action targeting Household International, a consumer finance business it acquired in 2003. In June 2016, shortly before a new trial was to begin, the case was settled for \$1.575 billion.

Table 3. **Post-PSLRA Securities Class Actions that Went to Trial**
As of 31 December 2014

Case Name	Federal Circuit	File Year	Trial Start Year	Verdict	Appeal and Post-Trial Proceedings	
					Date of Last Decision	Outcome
Verdict or Judgment Reached						
In re Health Management, Inc. Securities Litigation	2	1996	1999	Verdict in favor of defendants	2000	Settled during appeal
Koppel, et al v. 4987 Corporation, et al	2	1996	2000	Verdict in favor of defendants	2002	Judgment of the District Court in favor of defendants was affirmed on appeal
In re JDS Uniphase Corporation Securities Litigation	9	2002	2007	Verdict in favor of defendants		
Joseph J Milkowski v. Thane Intl Inc, et al	9	2003	2005	Verdict in favor of defendants	2010	Judgment of the District Court in favor of defendants was affirmed on appeal
In re American Mutual Funds Fee Litigation	9	2004	2009	Judgment in favor of defendants	2011	Judgment of the District Court in favor of defendants was affirmed on appeal
Claghorn, et al v. EDSACO, Ltd., et al	9	1998	2002	Verdict in favor of plaintiffs	2002	Settled after verdict
In re Real Estate Associates Limited Partnership Litigation	9	1998	2002	Verdict in favor of plaintiffs	2003	Settled during appeal
In re Homestore.com, Inc. Securities Litigation	9	2001	2011	Verdict in favor of plaintiffs		
In re Apollo Group, Inc. Securities Litigation	9	2004	2007	Verdict in favor of plaintiffs	2012	Judgment of the District Court in favor of defendants was overturned and jury verdict reinstated on appeal; case settled thereafter
In re BankAtlantic Bancorp, Inc. Securities Litigation	11	2007	2010	Verdict in favor of plaintiffs	2012	Judgment of the District Court in favor of defendants was affirmed on appeal
In re Longtop Financial Technologies Securities Litigation	2	2011	2014	Verdict in favor of plaintiffs		
In re Clarent Corporation Securities Litigation	9	2001	2005	Mixed verdict		
In re Vivendi Universal, S.A. Securities Litigation	2	2002	2009	Mixed verdict		
Jaffe v. Household Intl Inc, et al	7	2002	2009	Mixed verdict		
In re Equisure, Inc. Sec, et al v., et al	8	1997	1998	Default judgment		
Settled with at Least Some Defendants before Verdict						
Goldberg, et al v. First Union National, et al	11	2000	2003	Settled before verdict		
In re AT&T Corporation Securities Litigation	3	2000	2004	Settled before verdict		
In re Safety Kleen, et al v. Bondholders Litigati, et al	4	2000	2005	Partially settled before verdict, default judgment		
White v. Heartland High-Yield, et al	7	2000	2005	Settled before verdict		
In re Globalstar Securities Litigation	2	2001	2005	Settled before verdict		
In re WorldCom, Inc. Securities Litigation	2	2002	2005	Settled before verdict		

Note: Data are from case dockets and news.

Notes

- ¹ This edition of NERA's report on recent trends in securities class action litigation expands on previous work by our colleagues Lucy Allen, Dr. Renzo Comolli, the late Dr. Frederick C. Dunbar, Dr. Vinita M. Juneja, Sukaina Klein, Dr. Denise Neumann Martin, Dr. Jordan Milev, Dr. John Montgomery, Robert Patton, Dr. Stephanie Planchich, and others. The authors also thank Dr. Stephanie Planchich for helpful comments on this edition. In addition, we thank Edward Flores and other researchers in NERA's Securities and Finance Practice for their valuable assistance. These individuals receive credit for improving this paper; all errors and omissions are ours.
- ² Data for this report are collected from multiple sources, including Institutional Shareholder Services Inc., complaints, case dockets, Dow Jones Factiva, Bloomberg Finance L.P., FactSet Research Systems, Inc., US Securities and Exchange Commission (SEC) filings, and public press reports.
- ³ Craig Doidge, G. Andrew Karolyi, and René M. Stulz, "The U.S. Listing Gap," National Bureau of Economic Research Working Paper No. 21181, May 2015.
- ⁴ *In re Trulia, Inc. Stockholder Litigation*, C.A. No. 10020-CB (Del. Ch. Jan. 22, 2016).
- ⁵ "Global M&A Review: Full Year 2016 Final Results," Dealogic, January 2007.
- ⁶ 2010 deal growth and litigation rates obtained from M. D. Cain and S. D. Solomon, "A Great Game: The Dynamics of State Competition and Litigation," *Iowa Law Review*, Vol. 100, No. 165, 2015, Table 1. 2016 M&A activity growth obtained from "Global M&A Review: Full Year 2016 Final Results," Dealogic, January 2007.
- ⁷ M. D. Cain and S. D. Solomon, "A Great Game: The Dynamics of State Competition and Litigation," *Iowa Law Review*, Vol. 100, No. 165, 2015.
- ⁸ M. D. Cain and S. D. Solomon, "Takeover Litigation in 2015," Berkeley Center for Law Business and the Economy, 14 January 2016.

Alison Frankel, "Forum Selection Clauses Are Killing Multiforum M&A litigation," *Reuters*, 24 June 2014.
- ⁹ *In re Trulia, Inc. Stockholder Litigation*, C.A. No. 10020-CB (Del. Ch. Jan. 22, 2016), n. 36. The Seventh Circuit decision is *In re Walgreen Co. Stockholder Litigation*, No. 15-3799 (7th Cir. Aug. 10, 2016).
- ¹⁰ M. D. Cain and S. D. Solomon, "Takeover Litigation in 2015," Berkeley Center for Law Business and the Economy, 14 January 2016.
- ¹¹ Daniel Wolf, "Whack-a-Mole: The Evolving Landscape in M&A Litigation Following Trulia," Harvard Law School Forum on Corporate Governance and Financial Regulation, 25 August 2016.

Donald H. Tucker Jr. and Clifton L. Brinson, "The Death of Merger Litigation?" Commercial & Business Litigation Committee, Section of Litigation, American Bar Association, 8 August 2016.
- ¹² Warren S. de Wied, "Delaware Forum Selection Bylaws After Trulia," Harvard Law School Forum on Corporate Governance and Financial Regulation, 25 February 2016.
- ¹³ New York Superior Court decisions include: *In re Allied Healthcare Shareholder Litigation*, 2015 WL 6499467, (N.Y. Sup. Ct. Oct. 23, 2015) and *City Trading Fund v. Nye*, 2015 WL 93894 (N.Y. Sup. Ct. Jan. 7, 2015). As referenced in *In re Trulia, Inc. Stockholder Litigation*, C.A. No. 10020-CB (Del. Ch. Jan. 22, 2016), footnote 36. The Seventh Circuit decision is *In re Walgreen Co. Stockholder Litigation*, No. 15-3799 (7th Cir. Aug. 10, 2016).
- ¹⁴ Robert Patton, "Recent Trends in US Securities Class Actions against Non-US Companies," NERA Working Paper, 24 October 2012, available at <http://www.nera.com/publications/archive/2012/recent-trends-in-us-securities-class-actions-against-nonus-comp.html>.
- ¹⁵ Kane Wu, "U.S.-Listed China Firms Hurry Homeward," *The Wall Street Journal*, 17 November 2015.
- ¹⁶ Andrew Bolger, "Warning signs appear after bumper IPO year," *Financial Times*, 26 December 2014.
- ¹⁷ The calculation for these cases is somewhat different than for cases with 10b-5 claims.
- ¹⁸ In 2016, 13 cases constituted the largest category of Investor Losses.
- ¹⁹ Andrew Bolger, "U.S. Charges in Generic-Drug Probe to Be Filed by Year-End," *Bloomberg Markets*, 3 November 2016.
- ²⁰ Eric Kroh, "Poultry Producers Hit With Chicken Price Antitrust Suit," *Law360*, 3 September 2016.
- ²¹ See *In re Allied Healthcare Shareholder Litigation*, 2015 WL 6499467 (N.Y. Sup. Ct. Oct. 23, 2015) and *City Trading Fund v. Nye*, 2015 WL 93894 (N.Y. Sup. Ct. Jan. 7, 2015). As referenced in footnote 36 of *In re Trulia, Inc. Stockholder Litigation*, C.A. No. 10020-CB (Del. Ch. Jan. 22, 2016).
- ²² Fraser Tennant, "Global M&A activity down 18 percent in 2016 says new review," *Financier Worldwide*, 5 January 2017.
- ²³ For the purposes of this figure, we considered only co-defendants listed in the first identified complaint. Based on past experience, accounting co-defendants are sometimes added to or excluded from later complaints.

- ²⁴ *Janus Capital Group, Inc., et al. v. First Derivative Traders* (Docket No. 09-525)
- ²⁵ *Stoneridge Investment Partners v. Scientific-Atlanta, Inc.* (Docket No. 06-43)
- ²⁶ Deena Shanker, "Why America Pays 50% More for Chicken," *Bloomberg*, 28 September 2016.
- ²⁷ An alternative possibility is that once detected, full disclosure is made earlier, turning what would have been a "partial disclosure" into a complete disclosure.
- ²⁸ Douglas M. Boyle, James F. Boyle, and Brian W. Carpenter, "The SEC's Renewed Focus on Accounting Fraud, Insights and Implications for Auditors and Public Companies," *The CPA Journal*, February 2014.
- ²⁹ "SEC's New Whistleblower Program Takes Effect Today," US Securities and Exchange Commission, 12 August 2011.
- ³⁰ Outcomes of the motions for summary judgment are available from NERA but not shown in this report.
- ³¹ Historically, merger-objection cases tend to be dismissed within 221 days, compared to an average of 638 days for other cases. Half of merger-objection cases have historically been dismissed within 125 days, versus 524 days for other cases.
- ³² Svetlana Starykh and Stefan Boettlich, "Recent Trends in Securities Class Action Litigation: 2015 Full-Year Review," NERA Working Paper, 25 January 2016, available at <http://www.nera.com/publications/archive/2016/2015-Securities-Trends-Report.html>.
- ³³ Each of these analyses excludes IPO laddering cases and merger-objection cases because the former usually take much longer to resolve and the latter are usually much shorter to resolve.
- ³⁴ These settlements exclude those of merger-objection cases and in cases that settled with no cash payment to the class.
- ³⁵ The axes are in logarithmic scale, and the two largest settlements are excluded from this figure.

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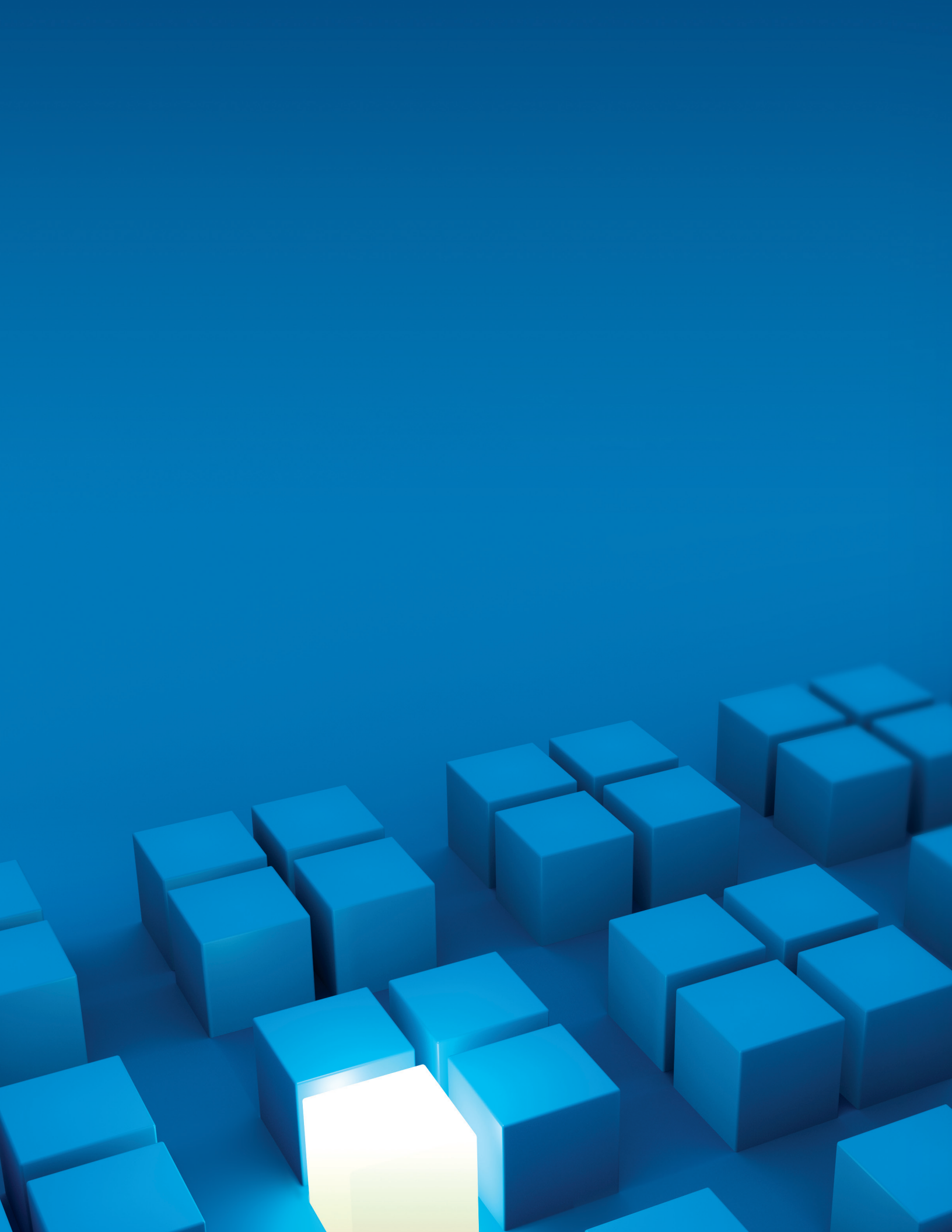
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